IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

KAREN ARMSTRONG,

Plaintiff,

v.

CIVIL ACTION FILE NO.: 4:13-CV-0050-HLM

FLOYD COUNTY, GEORGIA,
CITY OF ROME, GEORGIA,
ROME-FLOYD PARKS AND
RECREATION AUTHORITY,
RICHARD GARLAND, individually
and in his official capacity as the
Executive Director of the Rome-Floyd
Parks and Recreation Authority, and
DETECTIVE CHRIS ARRINGTON,

Defendants.

ORDER

This case is before the Court on Plaintiff's Motion for Partial Summary Judgment [147], on the Motion for

Summary Judgment filed by Defendant Richard Garland ("Defendant Garland") [151], on the Motion for Summary Judgment filed by Defendant Chris Arrington ("Defendant Arrington") [152], on the Motion for Summary Judgment filed by Defendant City of Rome, Georgia ("Defendant Rome") [153], and on the Motion for Summary Judgment filed by Defendant Rome-Floyd Parks and Recreation Authority ("Defendant RFPRA") [154].

I. Background

A. Procedural Background

The Court incorporates the procedural background portions of its earlier Orders into this Order as if set forth fully herein, and adds only those background facts that are relevant to the instant Motions. (Order of May 10, 2013

AO 72A
(Rev.8/82)

(Docket Entry No. 28); Order of July 1, 2013 (Docket Entry No. 43); Order of December 3, 2014 (Docket Entry No. 100).) On July 20, 2014, Plaintiff filed her Motion for Partial Summary Judgment. (Docket Entry No. 147.) On that same day, Defendants Garland, Arrington, Rome, and RFPRA filed their Motions for Summary Judgment. (Docket Entry No. 151 (Defendant Garland); Docket Entry No. 152 (Defendant Arrington); Docket Entry No. 153 (Defendant Rome); Docket Entry No. 154 (Defendant RFPRA).) The briefing processes for all the Motions are complete, and the Court finds that the matter is ripe for resolution.[1]

---

[1]Defendant Floyd County, Georgia ("Defendant Floyd") also filed a Motion for Summary Judgment. (Docket Entry No. 148.) The Court addresses that Motion in a separate Order.

AO 72A
(Rev.8/8
2)

The Court also observes at the outset that this case is before the Court in a much different procedural posture than in the Court's previous Orders. The Court's previous Orders all addressed Motions to Dismiss or Motions for Judgment on the Pleadings. (Order of May 10, 2013; Order of July 1, 2013; Order of December 3, 2014.) When addressing those Motions, the Court was required to accept Plaintiff's allegations as true and to view Plaintiff's allegations in the light most favorable to Plaintiff. Rivell v. Private Health Care Sys., Inc., 520 F.3d 1308, 1309 (11th Cir. 2008). The Court also could not consider materials other than the complaint, except for "attachments to the complaint, matters of public record, orders, and items appearing in the record." Clark v. Bibb Cnty. Bd. of Educ., 174 F. Supp. 2d 1369, 1370 (M.D. Ga. Nov. 7, 2001). Those restrictions do not apply at the summary judgment stage, and, as discussed infra, the absence of those restrictions makes a difference.

B. Factual Background

Plaintiff filed a Statement of Material Facts ("PSMF") in support of her Motion for Partial Summary Judgment. (Docket Entry No. 147-1.) Defendants Garland and Arrington filed a joint response to PSMF ("JRPSMF"). (Docket Entry No. 166.)

Defendants Arrington, Rome, RFPRA, and Garland filed a Joint Statement of Material Facts ("JSMF") in support of their various Motions for Summary Judgment. (Docket

AO 72A
(Rev.8/8
2)

Entry No. 151-2.)[2] Plaintiff filed a response to JSMF ("PRJSMF"). (Docket Entry No. 161.)

Plaintiff also filed her own Statement of Additional Material Facts ("PSAF"). (Docket Entry No. 162-1.) The Clerk's docket does not indicate that Defendants Rome, RFPRA, Garland, and Arrington responded to PSAF. (See generally Docket.) Defendants Rome, RFPRA, Garland, and Arrington consequently admitted the statements in PSAF, and, to the extent that the statements are distinct from statements in PSMF and JSMF, the Court includes those statements infra except where those statements are irrelevant or legal conclusions.

---

[2]JSMF appears at several places in the Clerk's docket. (Docket Entry Nos. 151-2, 152-2, 153-2, 154-2.) For purposes of this Order, the Clerk cites to JSMF's earliest appearance in the record.

AO 72A
(Rev.8/8
2)

Where a party admits or fails to dispute another party's proposed fact, the Court deems that fact admitted. Where a party disputes or objects to another party's proposed fact, the Court reviews the evidence in the record infra to determine whether the proposed fact is accurate.

Finally, keeping in mind that when deciding a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion, the Court provides the following statement of facts. Optimum Techs., Inc. v. Henkel Consumer Adhesives, Inc., 496 F.3d 1231, 1241 (11th Cir. 2007). This statement does not represent actual findings of fact. In re Celotex Corp., 487 F.3d 1320, 1328 (11th Cir. 2007). Instead, the Court has provided the statement

AO 72A
(Rev.8/8
2)

simply to place the Court's legal analysis in the context of this particular case or controversy.

1. Defendant RFPRA

In 1973, Defendant Floyd and Defendant Rome entered into an agreement creating Defendant RFPRA. (Docket Entry No. 33-2 at 1, 26; Docket Entry No. 33-4 at 3.) Defendant Floyd and Defendant Rome renewed the agreement establishing Defendant RFPRA in 1998. (Docket Entry No. 33-2 at 19, 26; Docket Entry No. 33-4 at 3.) Defendant RFPRA was created to develop, maintain, and operate a comprehensive parks and recreation service system for Defendants Rome and Floyd. (Docket Entry No. 33-2 at 2, 19, 27, 32; Docket Entry No. 33-4 at 4.)

AO 72A
(Rev.8/8
2)

Defendant Floyd funds Defendant RFRPA's budget. (Docket Entry No. 33-2 at 33.) Defendant Floyd is required to give sufficient funding to Defendant RFPRA so that Defendant RFPRA can fulfill its charge to expand the facilities open to all citizens of Defendants Rome and Floyd and to operate and maintain all facilities at a level equal to, or better than, in the years before 1998. (Docket Entry No. 33-2 at 27, 32.)

Defendant RFPRA is governed by a nine-member board. (Dep. of Richard Garland (Docket Entry No. 147-3) at 12-13.) Three members of Defendant RFPRA's board are appointed by Defendant Rome, while six members are appointed by Defendant Floyd. (Id.) One of Defendant Floyd's appointees is nominated by the City Council of Cave

AO 72A
(Rev.8/82)

Spring, Georgia, and then approved by Defendant Floyd. (Docket Entry No. 33-4 at 3.) One Defendant Floyd County Commissioner may serve as a member of Defendant RFPRA's board, but is prohibited from serving as the board's chairperson. (Id.)

Defendant RFPRA's board is a policy-making board and does not handle day to day disputes. (Garland Dep. at 13.) The members of Defendant RFPRA's board may be removed only for cause. (Docket Entry No. 33-2 at 21, 27, 32; Docket Entry No. 33-4 at 4.)

Defendant RFPRA is vested with all powers granted by O.C.G.A. § 36-64-1 et seq. (Docket Entry No. 33-2 at 28, 32.) Defendant RFPRA makes its own policies and procedures. (Id. at 32.)

AO 72A
(Rev.8/8
2)

Defendant RFPRA has the power to establish, revise, and collect fees and rentals for the use of recreation areas, as well as the power to impose conditions and to set requirements governing such use. (Docket Entry No. 33-2 at 28, 34.) Defendant RFPRA is authorized to enter into contracts. (Id. at 40-41.) Defendant RFPRA also holds title to equipment, vehicles, furnishings, and other personal property. (Id. at 23, 33.)

Defendant RFPRA is a separate entity from Defendant Floyd. (Dep. of Robert Patton McConnell (Docket Entry No. 149-9) at 6.) Defendant RFPRA also is a separate entity from Defendant Rome. (Aff. of Sammy Rich (Docket Entry No. 150-7) ¶ 13.) Defendant RFPRA is not a department of Defendant Rome. (Id. ¶ 3; JSMF ¶ 237; PRJSMF ¶ 237.)

AO 72A
(Rev.8/8
2)

Defendant RFPRA also is not a joint venture between Defendants Rome and Floyd. (Rich Aff. ¶ 4.) Defendant RFPRA is a separate legal entity from Defendants Rome and Floyd and was created by an intergovernmental agreement under O.C.G.A. § 36-64-1 et seq. (Id. ¶ 14.)

Defendant Rome does not control the actions of Defendant RFPRA or of its employees. (Rich Aff. ¶ 5.) Defendant Rome has no oversight authority over Defendant RFPRA, including Defendant RFPRA's personnel matters. (Id. ¶¶ 8, 12.) Defendant Rome's city commission does not have authority to dictate how Defendant RFPRA operates. (Id. ¶¶ 11-12.) Instead, Defendant RFPRA functions as a separate entity from Defendant Rome, and it has its own board of directors who determine its policies. (Id. ¶ 13.)

AO 72A
(Rev.8/8
2)

Defendant RFPRA hires its own director and other employees. (Docket Entry No. 33-2 at 29, 33.) Employees of Defendant RFRPA are considered employees of Defendant RFPRA, not employees of Defendant Rome or Defendant Floyd. (JSMF ¶¶ 84, 240; PRJSMF ¶¶ 84, 240.) Thus, Defendant Garland is not employed with Defendant Rome, and he has not been employed by Defendant Rome from the period from 2009 to date. (Rich Aff. ¶ 7; JSMF ¶ 241; PRJSMF ¶ 241.)

Defendant RFPRA's executive director's actions are subject to review by Defendant RFPRA's board. (Def. Floyd's Mot. Summ. J. Ex. A (Docket Entry No. 148-3) at 1.) The job description for Defendant RFPRA's executive

AO 72A
(Rev.8/8
2)

director states that this position "[a]nswers to the Board and work closely with the Chairman." (Id.)

Defendant RFRPA's employee handbook provides: "Any employee who is suspended, demoted, dismissed, or otherwise disciplined has the right to have that disciplinary action reviewed by the Authority Director and the RFPRA Personnel Committee. The decision of the Personnel Committee shall be final." (Def. Floyd's Mot. Summ. J. Ex. C (Docket Entry No. 148-5) at 6; see also id. at 18 ("All employees shall have a right to appeal any disciplinary action by his or her supervisor or the Authority Director to the RFPRA Personnel Committee. The decision of the RFPRA Personnel Committee shall be final.").) Defendant

AO 72A
(Rev.8/82)

RFPRA's employee handbook also contains the following provision:

> All RFPRA employees shall be allowed to request a review of alleged inequitable treatment based on a condition of employment. The RFPRA shall make every effort to resolve alleged inequitable treatment informally and formally, if necessary. No employee shall be disciplined or discriminated on the sole basis that he or she has alleged inequitable treatment.
>
> An employee who reasonably believes he or she is being treated inequitably in their position as an RFPRA employee shall first attempt to resolve the inequity by communicating, verbally or in writing, with his or her supervisor. Following this initial communication, if an employee believes inequitable treatment continues to exist, the employee must submit a written complaint, including the allegations and parties involved, to the Authority Director and request a review of the complaint by the RFRPA Personnel Committee. The Authority Director will then schedule a hearing and review by the RFPRA Personnel Committee within five (5) business days of the submission of the complaint, and notify the employee, and any

AO 72A
(Rev.8/8
2)

> other employees involved in the allegations, of the time and place. Also, the Authority Director shall provide a copy of the complaint and any other related documents, to all employees involved in the allegations and members of the RFPRA Personnel Committee. Following the hearing and review by the RFPRA Personnel Committee, the Authority Director shall respond to the complaint in writing with the decision of the RFPRA Personnel Committee within two (2) weeks and deliver a copy to all RFPRA employees involved. The decision of the RFPRA Personnel Committee will be final.

(Id. at 21.)

Defendant RFPRA has a service agreement with Defendant Floyd's finance department, and under that agreement, Defendant Floyd's finance department manages all of Defendant RFPRA's funds. (JSMF ¶ 86; PRJSMF ¶ 86.) Defendant RFPRA's funds are held in a separate bank account from Defendant Floyd's funds. (JSMF ¶ 87; PRJSMF ¶ 87.) Defendant RFPRA has a financial account

AO 72A
(Rev.8/8
2)

with United Community Bank that it used as an operating account, and that account bears interest. (JSMF ¶ 177; PRJSMF ¶ 177.)

Defendant Garland is Defendant RFPRA's Executive Director. (JSMF ¶ 83; PRJSMF ¶ 83; PSMF ¶ 2; JRPSMF ¶ 2.) As Executive Director, Defendant Garland possessed discretionary authority over Defendant RFPRA's personnel functions. (PSMF ¶ 3; JRPSMF ¶ 3.)

From October 2007 through March 2013, Larry Powell was an employee of Defendant RFPRA. (JSMF ¶ 143; PRJSMF ¶ 143.) Prior to his employment with Defendant RFPRA, Mr. Powell was the associate executive director in charge of youth sports at the YMCA. (JSMF ¶ 144; PRJSMF ¶ 144.) Mr. Powell was the sports manager for

AO 72A
(Rev.8/8
2)

Defendant RFPRA. (JSMF ¶ 145; PRJSMF ¶ 145.) Mr. Powell joined Defendant RFPRA approximately two months before Plaintiff did. (JSMF ¶ 146; PRJSMF ¶ 146.) Defendant Garland was Mr. Powell's supervisor at Defendant RFPRA. (JSMF ¶ 147; PRJSMF ¶ 147.)

Karen Earwood works for Defendant RFPRA as the administrative assistant in the sports division. (JSMF ¶ 152; PRJSMF ¶ 152.) During the time period relevant to this action, Ms. Earwood reported directly to Mr. Powell. (JSMF ¶ 153; PRJSMF ¶ 153.)

2. Plaintiff's Employment

In fall 2007, Plaintiff became the gymnastics coordinator for Defendant RFPRA. (JSMF ¶ 1; PRJSMF ¶ 1; PSMF ¶ 1; JRPSMF ¶ 1.) Plaintiff coached the Flip City

AO 72A
(Rev.8/8
2)

Aerials gymnastics team (the "Team") while at Defendant RFPRA. (JSMF ¶ 3; PRJSMF ¶ 3.) Plaintiff reported directly to Mr. Powell. (JSMF ¶ 148; PRJSMF ¶ 148.)

As gymnastics coordinator, Plaintiff was responsible for operating a recreational gymnastics program and a team gymnastics program for children who wished to travel to competitions. (PSMF ¶ 4; JRPSMF ¶ 4; JSMF ¶ 94; PRJSMF ¶ 94.)

3. Gymnastics at Defendant RFPRA

a. The Teams, Fees, and the Season

Defendant RFPRA has two types of gymnastics programs: (1) recreational gymnastics, which is a program to introduce children to the sport; and (2) team gymnastics, a higher-level program where participants are part of a

AO 72A
(Rev.8/82)

competitive team that competes in meets. (JSMF ¶ 92; PRJSMF ¶ 92; PSMF ¶ 4; JRPSMF ¶ 4.) Defendant RFPRA's gymnastics program charges both team and recreational participants monthly tuition, or a monthly fee, for the training that the participants receive. (JSMF ¶ 93; PRJSMF ¶ 93; PSMF ¶ 5; JRPSMF ¶ 5.)

The monthly fee for team gymnastics was intended to cover a portion of the expenses related to operating the gym, but did not include entry fees for competitive meets. (JSMF ¶ 95; PRJSMF ¶ 95; PSMF ¶ 6; JRPSMF ¶ 6.) Team gymnastics participants paid an additional meet fee, which was intended to cover the entry fee, travel costs, meals, and other expenses associated with competing at a

AO 72A
(Rev.8/8
2)

meet. (JSMF ¶ 96; PRJSMF ¶ 96; PSMF ¶ 7; JRPSMF ¶ 7.)

Plaintiff was responsible for estimating what the costs would be for competitive meets at the beginning of each fiscal year, and she could make recommendations for what those fees should be each year. (PSMF ¶ 8; JRPSMF ¶ 8.) According to Plaintiff, there was no formal policy establishing what costs should be included when estimating each year's "team fee," or whether that fee should include the cost of leotards and other equipment. (Pl. Dep. at 70, 77, 94.) There was some uncertainty as to what the total costs would be for team gymnastics each year, because it was uncertain whether the team would qualify for state, regional, and national meets that would involve additional

AO 72A
(Rev.8/82)

costs. (PSMF ¶ 11; JRPSMF ¶ 11.) Defendant Garland testified that he could not recall providing Plaintiff with instructions concerning what costs should be included when establishing the team fee. (Garland Dep. at 72-73, 80.) Sometimes collecting additional money from parents was necessary because Defendant RFPRA could not get more money from Defendant Floyd. (PSMF ¶ 58; JRPSMF ¶ 58.)

Mr. Powell testified that the gymnastics budget did not include leotards because those were the parents' responsibility. (Powell Dep. at 11-13.) According to Defendant Garland, the gymnastics budget did not include a line item for leotards, but the team fee should cover what the team needed. (Garland Dep. at 77.) Defendant Garland, however, acknowledged that the parent orientation

AO 72A
(Rev.8/82)

handbook stated that leotards were the parents' responsibility. (Id.) In any event, the cost of competitive uniforms for gymnastics was not included in the annual budget. (PSMF ¶ 59; JRPSMF ¶ 59.)

Defendant RFPRA uses a program called ActiveNet as the registration platform to register participants for programs and activities that Defendant RFPRA offers. (JSMF ¶ 97; PRJSMF ¶ 97.) A competitive gymnastics season generally began in August or September with preseason training. (JSMF ¶ 4; PRJSMF ¶ 4.) Meets occurred from October through the spring, culminating with the State meet in May. (JSMF ¶ 5; PRJSMF ¶ 5.) Nationals typically occurred in June or July of each year. (JSMF ¶ 6; PRJSMF ¶ 6.)

AO 72A
(Rev.8/82)

According to Mr. Powell, money paid for meet fees and outfits was not revenue to Defendant RFPRA. (Powell Dep. at 27-28.) Instead, those funds were "money in/money out." (Id.)

b. The Memo and Checks

In summer 2009, Plaintiff wrote a memorandum (the "July 2009 Memo") to Team parents instructing parents to pay $114 for the "Total competitive package." (JSMF ¶ 7; PRJSMF ¶ 7.) In the July 2009 Memo, Plaintiff requested that Team parents make their checks payable to her, noting: "I will be ordering them myself, so please make your check out to Karen Armstrong." (JSMF ¶ 8; PRJSMF ¶ 8.) $14 of the $114 amount was intended to cover each gymnast's AAU membership fee. (JSMF ¶ 9; PRJSMF ¶ 9.) Plaintiff

AO 72A
(Rev.8/8
2)

testified that the AAU money would have been placed in a Defendant RFPRA account. (Dep. of Karen S. Earwood (Docket Entry No. 149-8) at 35-36.) Plaintiff testified that she would have "probably" delivered the AAU money to Defendant RFPRA in a lump sum in cash. (JSMF ¶ 12; PRJSMF ¶ 12.) According to Plaintiff, she would have noted in Defendant RFPRA's internal records that she was depositing $14 per gymnast for the AAU membership. (JSMF ¶ 14; PRJSMF ¶ 14.) Defendant RFPRA's internal record-keeping system, ActiveNet, does not reflect a $14 credit for AAU membership fee for the 2009 season because Plaintiff did not enter those credits into the ActiveNet system. (JSMF ¶ 18; PRJSMF ¶ 18.)

AO 72A
(Rev.8/8
2)

To get cash, Plaintiff sometimes wrote herself a check and then cashed the check. (Pl. Dep. at 37-38.) According to Plaintiff, she also kept cash on hand because she had to get money orders out. (Id. at 100.) Plaintiff noted that she might cash checks so that she would not have bounced checks from parents. (Id.) Plaintiff kept some meet fee expenses in cash at her home. (JSMF ¶ 57; PRJSMF ¶ 57.) Defendant RFPRA would have no record of Plaintiff's collection of funds that she kept in cash at her home. (Pl. Dep. at 100-01.)

On July 14, 2009, Plaintiff received a check from Robert C. Pyle and Rana A. Pyle made payable to Plaintiff in the amount of $114, bearing a memo line stating, "leo, bag, et cetera." (JSMF ¶ 27; PRJSMF ¶ 27.) That check

AO 72A
(Rev.8/82)

was provided to pay for "leotard, bag, and AAU." (JSMF ¶ 28; PRJSMF ¶ 28.) Plaintiff generally endorsed that check. (JSMF ¶ 29; PRJSMF ¶ 29.)

On July 15, 2009, Plaintiff received a check from James or Kelly Bridges made payable to Plaintiff in the amount of $114, in response to the July 2009 memo. (JSMF ¶ 19; PRJSMF ¶ 19.) Plaintiff generally endorsed that check. (JSMF ¶ 20; PRJSMF ¶ 20.) Plaintiff did not enter a $14 credit in the ActiveNet system to show that the Bridges had paid the $14 AAU membership fee. (Pl. Dep. at 45.) According to Plaintiff, "[t]here was no need to" do that because she purchased the numbers in bulk. (Id. at 38.)

AO 72A
(Rev.8/8
2)

On July 16, 2009, Plaintiff received a check from John Corey Lively and Amanda Lively made payable to Plaintiff in the amount of $114, "for the leotard, the bag, and the AAU number". (JSMF ¶ 24; PRJSMF ¶ 24.) Plaintiff did not enter a $14 credit in the ActiveNet system to show that the Liveleys had paid the $14 AAU membership fee, and the ActiveNet system did not reflect that they had paid it. (Pl. Dep. at 50-51.)

On July 22, 2009, Plaintiff received a check from Edward R. Chance and/or Rebecka A. Chance made payable to Plaintiff in the amount of $114, in response to the July 2009 Memo and to pay for "leotard, bags, and AAU number." (JSMF ¶ 23; PRJSMF ¶ 23.)

AO 72A
(Rev.8/8
2)

On July 23, 2009, Plaintiff received a check from Dr. Vaughn and Mrs. Vaughn made payable to Plaintiff in the amount of $228 with the memo stating "Leo." (JSMF ¶ 30; PRJSMF ¶ 30.) The Vaughns had two gymnasts and the check reflected two $114 payments. (JSMF ¶ 32; PRJSMF ¶ 32.) The ActiveNet system does not reflect a $14 credit for either Vaughn gymnast. (Pl. Dep. at 52.)

c. AAU Memberships

On or about October 13, 2009, Plaintiff completed a purchase order for the AAU memberships. (JSMF ¶ 33; PRJSMF ¶ 33.) That purchase order was in the amount of $668, an amount representing a $30 payment for the Team's club membership, a $14 coach membership, and

AO 72A
(Rev.8/82)

payment for fifty-two gymnasts at $12 each. (JSMF ¶ 34; PRJSMF ¶ 34.)

Plaintiff purchased the AAU memberships online and paid for the memberships using Defendant RFPRA's credit card. (JSMF ¶ 15; PRJSMF ¶ 15.) Plaintiff had to "register each child" so that each child received an individual AAU membership number. (JSMF ¶ 16; PRJSMF ¶ 16.) Plaintiff does not remember specifically when she turned in the AAU money, but she testified that Defendant Garland and Mr. Powell "would never have signed that purchase order if that money was not in there." (Pl. Dep. at 41.) On October 28, 2009, Defendant RFPRA paid the $668 in AAU membership fees. (JSMF ¶ 35; PRJSMF ¶ 35.)

AO 72A
(Rev.8/8
2)

Defendant RFPRA maintains a cash receipt report. (JSMF ¶ 250; PRJSMF ¶ 250.) According to Defendant RFPRA, the cash receipt report does not reflect that any of the AAU fees that Plaintiff colleted, as evidenced by the July 27, 2009, deposit detail, were deposited into Defendant RFRPA's account. (Defendant RFPRA Cash Receipt Reports (Docket Entry No. 156).)

d. USA Gymnastics Memberships

Defendant RFPRA paid membership fees to USA Gymnastics for certain high-performing gymnasts who required memberships to compete under that body. (JSMF ¶ 36; PRJSMF ¶ 36.) Plaintiff received a $40 check drawn on the account of Jeff Arasmith or Sharon Arasmith, dated October 29, 2009, and made payable to Plaintiff, which was

AO 72A
(Rev.8/82)

to pay for a USA Gymnastics membership. (JSMF ¶ 37; PRJSMF ¶ 37.) Plaintiff generally endorsed that check. (JSMF ¶ 38; PRJSMF ¶ 38.) The ActiveNet system did not reflect the Arasmith's check. (JSMF ¶ 39; PRJSMF ¶ 39.)

e. Meet Fees

Funds intended to cover items such as entry fees for gymnastics meets, coaches' travel, coaches' expense, and coaches' certifications were designated as "meet fee expenses." (JSMF ¶ 60; PRJSMF ¶ 60.) Some parents paid the $400 meet fee expenses for the 2009-10 season directly to Plaintiff, while some parents paid the expenses directly to Defendant RFPRA. (JSMF ¶ 63; PRJSMF ¶ 63.) The funds that Plaintiff collected as meet fee expenses

AO 72A
(Rev.8/8
2)

were used to pay for co-worker Haley Murray's certifications. (JSMF ¶ 59; PRJSMF ¶ 59.)

In 2009, Plaintiff made a check request for Defendant RFPRA to pay for Ms. Murray's certifications. (JSMF ¶ 61; PRJSMF ¶ 61.) Defendant RFPRA paid some entry fees for the Team's gymnastics meets, while Plaintiff paid the entry fees for the state meets directly. (Pl. Dep. at 113, 120; JSMF ¶ 249; PRJSMF ¶ 249.)

If a parent paid meet fee expenses through a check made payable to Defendant RFPRA, Plaintiff entered a corresponding memo in the ActiveNet system to show a credit for that payment in the gymnast's account. (JSMF ¶ 66; PRJSMF ¶ 66.) If a parent paid meet fee expenses through a check made payable to Plaintiff, there would not

AO 72A
(Rev.8/8
2)

be a corresponding ActiveNet entry reflecting a credit for that payment unless Plaintiff deposited "it in there." (JSMF ¶ 67; PRJSMF ¶ 67.)

f. Bank Accounts

Defendant Garland instructed Plaintiff that she could not maintain a bank account for the Team as she had done when she coached the Team through the YMCA. (JSMF ¶ 64; PRJSMF ¶ 64.) According to Plaintiff, Defendant Garland would have preferred that all the money go through Defendant RFPRA and its accounts. (JSMF ¶ 65; PRJSMF ¶ 65.) Mr. Powell testified that he was aware that it was against Defendant RFPRA's policy for parents to write him checks; instead, "everything had to go through the process and be turned in appropriately." (JSMF ¶ 123; PRJSMF ¶

AO 72A
(Rev.8/82)

123 (admitting Powell gave this testimony).) According to Mr. Powell, he brought that information to Plaintiff's attention. (JSMF ¶ 124; PRJSMF ¶ 124 (admitting Powell gave this testimony).) Mr. Powell testified that he told Plaintiff that if she received funds after Defendant RFPRA had closed for the night, those funds were to be turned over to Defendant RFPRA so that the funds could be "processed the next day." (JSMF ¶ 125; PRJSMF ¶ 125 (admitting Powell gave this testimony).)

According to Mr. Powell, he believed that payments for items such as leotards were being paid directly to the supplier companies, not to Plaintiff. (JSMF ¶ 150; PRJSMF ¶ 150.) Mr. Powell did not believe that Defendant RFPRA was responsible for purchasing leotards and other

AO 72A
(Rev.8/8
2)

equipment for gymnastics competition. (Powell Dep. at 12-13, 16-17.) Mr. Powell did not recall sitting down and talking with Plaintiff about the policy. (Id. at 18.) Mr. Powell testified that Plaintiff could run fundraisers or "whatever she had to do as far as raising money for her meets," but that the fundraisers should come through him so that he had "knowledge of what she was doing during that week or during that time." (Id. at 16.)

Plaintiff allowed some parents to pay Plaintiff directly. (Pl. Dep. at 120.) Plaintiff testified that she was "in control of those meet fees and those monies." (JSMF ¶ 129; PRJSMF ¶ 129.) Plaintiff testified that she was aware that Defendant RFPRA had a policy against her holding meet fees in her personal account since at least "closer in the end

AO 72A
(Rev.8/82)

of [the 2007] meet season," but that she "chose to go against that policy." (JSMF ¶ 130; PRJSMF ¶ 130.)

Plaintiff also was aware of another Defendant RFPRA policy that prohibited a gymnast from competing in a meet if the gymnast's account with Defendant RFPRA was not current. (JSMF ¶ 131; PRJSMF ¶ 131.) Plaintiff testified that she disregarded that policy because "regardless if they can pay, that was my job as a coach to make sure those kids got to go, regardless if the parent could pay or not." (JSMF ¶ 132; PRJSMF ¶ 132.) Plaintiff noted: "How can you care about policy when a child is involved?" (JSMF ¶ 133; PRJSMF ¶ 133.)

During January and February 2010, Plaintiff was "holding onto" state entry fee money in the amount of

AO 72A
(Rev.8/8
2)

approximately $2,950 for a February 22, 2010, entry deadline. (JSMF ¶ 134; PRJSMF ¶ 134.) According to Plaintiff, she "held onto" that money in her personal bank account for "two to three weeks." (JSMF ¶ 135; PRJSMF ¶ 135.) In Plaintiff's account, the money was commingled with her own money that she used to pay personal expenses. (JSMF ¶ 136; PRJSMF ¶ 136.) During her criminal trial, Plaintiff testified that the meet fee money would have accrued interest if she had turned the money over to Defendant RFPRA for deposit into Defendant RFPRA's account. (Criminal Trial Tr. (Docket Entry No. 91) at 545.)

g. Parent Testimony

AO 72A
(Rev.8/8
2)

Plaintiff presented declarations from some parents who stated that they sometimes made payments directly to Plaintiff for expenses such as gymnastics competition fees, leotards and gym bags, and that this practice was followed at the YMCA. (Decl. of Allison Schultz (Docket Entry No. 147-6) ¶ 3; Decl. of Noelle Schaekel (Docket Entry No. 147-7) ¶ 4; Decl. of Tracy Baker (Docket Entry No. 147-8) ¶ 3; Decl. of Tunya Parker (Docket Entry No. 147-9) ¶ 5.) According to those parents, those funds were not Defendant RFPRA's property. (Schultz Decl. ¶ 4; Schaekel Decl. ¶ 5; Baker Decl. ¶ 4; Parker Decl. ¶ 6.) Instead, the parents stated that they paid tuition to Defendant RFPRA for classes and that the money they paid to Plaintiff for competition costs was their own money. (Schultz Decl. ¶ 4;

AO 72A
(Rev.8/8
2)

Schaekel Decl. ¶ 5; Baker Decl. ¶ 4; Parker Decl. ¶ 6.) The parents stated that they did not intend to convert the funds to Defendant RFPRA's possession for its use or for it to earn interest. (Schultz Decl. ¶ 5; Schaekel Decl. ¶ 6; Baker Decl. ¶ 5; Parker Decl. ¶ 7.) The parents further averred that they got everything for which they paid Plaintiff. (Schultz Decl. ¶ 6; Schaekel Decl. ¶ 7; Baker Decl. ¶ 6; Parker Decl. ¶ 8.)

4. The Investigation

In early 2010, Ms. Earwood became aware that Plaintiff was accepting funds directly from parents. (JSMF ¶ 162; PRJSMF ¶ 162.) According to Ms. Earwood, a parent reviewed her account and stated that there were payments that were not showing up in the account statement. (JSMF

AO 72A
(Rev.8/82)

¶ 162; PRJSMF ¶ 162.) The parent then provided copies of checks evidencing payments. (JSMF ¶ 162; PRJSMF ¶ 162.)

Defendant Garland learned that Plaintiff was taking payments from parents and making purchases outside Defendant RFPRA's budget, and began an investigation. (Garland Dep. at 97-98.) During the investigation, Defendant RPFRA became aware that Plaintiff paid entry fees outside of Defendant RFPRA's budget expenditure process. (JSMF ¶ 100; PRJSMF ¶ 100.) The investigation was the first time Defendant Garland learned that Plaintiff had been receiving funds directly from gymnastics parents and making purchases outside Defendant RFPRA's budgeting process. (JSMF ¶ 99; PRJSMF ¶ 99.)

AO 72A
(Rev.8/8
2)

Defendant Garland did not interview Plaintiff to get her side of the story. (Garland Dep. at 98; PSMF ¶ 19; JRPSMF ¶ 19.)

On February 9, 2010, Plaintiff was placed on administrative leave with pay. (JSMF ¶ 85; PRJSMF ¶ 85; PSMF ¶ 18, as modified per JRPSMF ¶ 18.) Ms. Earwood took minutes of the meeting in which Plaintiff was informed that she was being placed on administrative leave. (JSMF ¶ 163; PRJSMF ¶ 163.)

Defendant Garland initially contacted Defendant Rome's police department between February 9 and 11, 2010, before Plaintiff resigned. (JSMF ¶ 103; PRJSMF ¶ 103; PSMF ¶ 21; JRPSMF ¶ 21.) Defendant Garland called the police department but did not initiate contact with

Defendant Arrington. (JSMF ¶ 104, as modified per PRJSMF ¶ 104.) Specifically, Defendant Garland knew Elaine Snow, the chief of police, personally, and he called her to discuss what Defendant RFPRA had found. (JSMF ¶ 105; PRJSMF ¶ 105.) Defendant Garland contacted the police department before Plaintiff resigned and before Defendant RFPRA's internal investigation had concluded. (Garland Dep. at 99.)

Following Defendant Garland's call to the police department, Defendant Arrington received a call from his boss, Lieutenant Gary Clayton, about a possible theft at Defendant RFPRA. (Arrington Dep. at 13; PSMF ¶ 22; JRPSMF ¶ 22.) Lieutenant Clayton told Defendant

AO 72A
(Rev.8/8
2)

Arrington to go to Defendant RFRPA and speak with officials there. (JSMF ¶ 181; PRJSMF ¶ 181.)

Defendant Arrington and another detective met with Defendant Garland, Mr. Powell, and Ms. Earwood. (JSMF ¶ 109; PRJSMF ¶ 109.) Defendant Garland did not know Defendant Arrington outside of Defendant Arrington's role as a police officer or on a social basis. (JSMF ¶ 112; PRJSMF ¶ 112.)

During the initial meeting with Defendant Arrington, Defendant RFPRA's employees "laid out the information for [Defendant] Arrington and asked for his assistance." (JSMF ¶ 116; PRJSMF ¶ 116.) According to Defendant Arrington, Defendant Garland did not express an opinion concerning criminal culpability during the initial meeting. (Arrington

AO 72A
(Rev.8/8
2)

Dep. at 14-15.) Defendant Arrington advised Defendant RFPRA to conduct an internal audit. (JSMF ¶ 184; PRJSMF ¶ 184.) According to Defendant Arrington, Defendant Garland requested that he begin an investigation. (Arrington Dep. at 14.) At that time, Defendant Arrington understood that Defendant Garland "ran the entire Parks and Recreation Department." (PSMF ¶ 24; JRPSMF ¶ 24.) According to Mr. Powell, during the first meeting, the law enforcement officers "were doing all the talking basically" and Defendant Garland "was doing all the responding back." (Powell Dep. at 19.)

Defendant Garland assigned Ms. Earwood to serve as Defendant RFPRA's "point person" for gathering information

AO 72A
(Rev.8/8
2)

and trying to resolve accounts concerning the investigation of Plaintiff. (JSMF ¶ 98; PRJSMF ¶ 98.)

When Plaintiff was placed on administrative leave, Defendant Garland contacted Gary Burkhalter, Defendant Floyd's Finance Director, to inform him of the situation. (JSMF ¶ 90; PRJSMF ¶ 90.) Pat McConnell, a Defendant Floyd employee and internal auditor, conducted an audit concerning the investigation into Plaintiff's handling of funds. (JSMF ¶¶ 89, 167; PRJSMF ¶¶ 89, 167.) Mr. Burkhalter advised Mr. McConnell of the investigation and assigned Mr. McConnell to conduct the internal audit concerning Plaintiff's handling of money. (JSMF ¶¶ 91, 172; PRJSMF ¶¶ 91, 172.) According to Mr. McConnell, he was told that his role would be to "review the work that Karen

AO 72A
(Rev.8/8
2)

Earwood would be doing and reviewing it for accuracy and completeness." (JSMF ¶ 173; PRJSMF ¶ 173.) Mr. McConnell testified that he does not recall Defendant RFPRA's staff using the word "theft"; rather, the issue was more "missing money." (JSMF ¶ 174; PRJSMF ¶ 174 (admitting that Mr. McConnell gave this testimony but disputing its truth).)

In his job as internal auditor, Mr. McConnell does "special projects at the direction of the controller/director of finance." (JSMF ¶ 168; PRJSMF ¶ 168.) Mr. McConnell also served as Defendant RFPRA's general accountant. (JSMF ¶ 169; PRJSMF ¶ 169.)

Mr. McConnell drafted an audit report of his findings. (JSMF ¶ 175; PRJSMF ¶ 175.) Mr. McConnel did not audit

AO 72A
(Rev.8/8
2)

Plaintiff's personal accounts because he did not have access to those accounts. (JSMF ¶ 176; PRJSMF ¶ 176.) Mr. McConnell reviewed two receipt books during his investigation. (JSMF ¶ 179; PRJSMF ¶ 179.) Mr. McConnell did not make a recommendation concerning whether Plaintiff should be criminally prosecuted. (JSMF ¶ 177; PRJSMF ¶ 177.) Mr. McConnell's audit report stated that amounts claimed for leotards, gym bags, and fund raiser payments would be used to reduce the shortfall. (McConnell Dep. at 16-17.)

Ms. Earwood provided documents to Defendant Arrington via facsimile. (JSMF ¶ 154; PRJSMF ¶ 154.) Defendant Arrington asked Ms. Earwood to provide him with check copies, receipts, and items that customers were

AO 72A
(Rev.8/8
2)

submitting. (JSMF ¶ 155; PRJSMF ¶ 155.) The documents that Ms. Earwood provided to Defendant Arrington included ledgers and copies of checks made payable to Plaintiff. (JSMF ¶ 185; PRJSMF ¶ 185.)

Ms. Earwood testified that she never expressed an opinion to Defendant Arrington that she believed Plaintiff had committed a crime. (JSMF ¶ 156; PRJSMF ¶ 156.) Ms. Earwood's involvement in the investigation was limited to providing documents to Defendant Arrington. (JSMF ¶ 157; PRJSMF ¶ 157.)

Ms. Earwood also performed account comparisons. (JSMF ¶ 158; PRJSMF ¶ 158.) Ms. Earwood printed each separate ActiveNet account statement and provided those statements to the parents to determine whether there were

AO 72A
(Rev.8/8
2)

discrepancies. (JSMF ¶ 159; PRJSMF ¶ 159.) A number of parents submitted copies of checks or receipts showing additional funds that they had paid for gymnastics expenses. (JSMF ¶ 160; PRJSMF ¶ 160.) According to Ms. Earwood, a shortfall remained after applying the cash funds received from Plaintiff. (Earwood Dep. at 19.)

On February 9 or 10, 2001, after being placed on administrative leave, Plaintiff turned over $4,320 to Defendant RFPRA through Ms. Murray on either February 9 or 10, 2010. (JSMF ¶¶ 54, 115, 137; PRJSMF ¶¶ 54, 115, 137; Garland Dep. at 111.) That amount included $2,950 in meet fee expenses. (JSMF ¶¶ 55, 137; PRJSMF ¶¶ 55, 137.) The amount also included some of the "$100 a month scheduled payments." (JSMF ¶ 56; PRJSMF ¶ 56.)

AO 72A
(Rev.8/8
2)

Defendant Garland had no evidence that Plaintiff used the money for a personal or non-gymnastics related purpose, and is not aware of any such evidence. (Garland Dep. at 113-14.)

Plaintiff also turned in a list detailing where the funds should be applied. (Garland Dep. at 88-89 & Pl. Ex. 4.) Ms. Earwood attempted to use the list to apply the funds to the individual gymnasts. (Id. at 108.) According to Ms. Earwood, there was still a shortfall. (Earwood Dep. at 19.)

During the investigation, Defendant Arrington was aware that Plaintiff turned in $4,320 to Defendant RFPRA, that Plaintiff did not have permission to keep the money in her personal account, and that Plaintiff was supposed to turn the money over to Defendant RFPRA. (JSMF ¶ 139;

AO 72A
(Rev.8/82)

PRJSMF ¶ 139.) Defendant Arrington received a copy of Mr. McConnell's audit report during his investigation. (JSMF ¶ 188; PRJSMF ¶ 188.) Defendant Arrington testified at his deposition that he was not familiar with the list that Plaintiff provided to Defendant RFPRA with the $4,320 cash, and that he did not recall whether Defendant RFPRA's employees showed him that list. (Arrington Dep. at 39-40.) According to Defendant Arrington, the list would have been important. (Id. at 41.) Defendant Arrington, however, stated that "the issue was that [Plaintiff] had retained money that was supposed to be paid to [Defendant RFPRA." (Id. at 42.) Defendant Arrington had no evidence indicating that Plaintiff used the funds for non-gymnastics-related purposes or that she spent the money for her own

AO 72A
(Rev.8/8
2)

purpose. (Id. at 26.) Defendant Arrington testified that retaining money that Plaintiff should have paid for meet fees was not criminal, but that retaining money that was supposed to be Defendant RFRPA's fees would be criminal. (Id. at 46.)

Defendant Arrington testified that he spoke with a parent, Jill Kozlowski, regarding her concerns about Plaintiff's handling of money. (Arrington Dep. at 18-19.) According to Defendant Arrington, a parent complained to him that she had paid money and that the money had not been deposited into her child's account with Defendant RFRPA. (Id. at 19-20.)

Defendant Arrington interviewed Plaintiff for less than thirty minutes in connection with his investigation. (Pl. Dep.

AO 72A
(Rev.8/8
2)

at 62; JSMF ¶ 189, as modified per PRJSMF ¶ 189; PSMF ¶ 40; JRPSMF ¶ 40.) Plaintiff brought "some copies of checks and something else" that Defendant Arrington could not recall to the interview. (PSMF ¶ 42; JRPSMF ¶ 42.) According to Defendant Arrington, during the interview, Plaintiff "was doing the best she could to try to explain" what "her purpose for the money was," but he went ahead and read her Miranda rights to her. (PSMF ¶ 41; JRPSMF ¶ 41.) Plaintiff asked to see an attorney and Defendant Arrington ended the interview. (JSMF ¶ 73; PRJSMF ¶ 73.)

Defendant Arrington testified that he met with Defendant RFPRA officials twice. (JSMF ¶ 190; PRJSMF ¶ 190.) One meeting occurred on or about February 9, 2010, and the other occurred on or about February 11,

AO 72A
(Rev.8/8
2)

2010. (JSMF ¶ 190; PRJSMF ¶ 190.) Each meeting lasted less than an hour. (PSMF ¶ 39; JRPSMF ¶ 39.)

Two parents gave declarations stating that they tried to contact Defendant Arrington but that Defendant Arrington failed to return their voicemail messages. (Schultz Decl. ¶ 8 (stating that she tried to contact Defendant Arrington more than once); Schaekel Decl. ¶ 8 (averring that she tried to contact Defendant Arrington two times).) Another parent stated that several parents spoke up during a meeting that Defendant RFPRA held after Plaintiff was placed on administrative leave, but that Defendant Garland did not want to listen. (Baker Decl. ¶ 7.)

In Defendant Arrington's opinion, he determined that Plaintiff committed a theft by retaining funds that were

AO 72A
(Rev.8/82)

meant to be paid to Defendant RFPRA. (JSMF ¶ 191; PRJSMF ¶ 191.) Defendant Arrington testified that he was told by either Defendant Garland, Mr. Powell, or Ms. Earwood that the money was supposed to go to Defendant RFPRA. (Arrington Dep. at 25.) Defendant Arrington further testified that he relied on the audit to indicate that Defendant RFPRA's funds were missing. (Id. at 30.) Defendant Arrington further testified that he relied on statements by Defendant RFPRA's staff indicating that Plaintiff was supposed to turn the money over to Defendant RFPRA. (Id. at 30-31.) Defendant Arrington was told that there was no written policy that Plaintiff was supposed to turn the money over to Defendant RFPRA, but he also was told that Plaintiff had been instructed to turn the money over

AO 72A
(Rev.8/8
2)

to Defendant RFPRA. (JSMF ¶ 199; PRJSMF ¶ 199.) Defendant Arrington inferred from the fact that Plaintiff did not turn the money into Defendant RFPRA when she was supposed to that Plaintiff intended either to use the money for her own purposes or to deprive Defendant RFPRA of the use of the money. (JSMF ¶ 198; PRJSMF ¶ 198.) According to Defendant Arrington, someone with Defendant RFPRA told him that the money that was paid as fees were supposed to be paid to Defendant RFPRA. (Arrington Dep. at 25.)

Defendant Arrington testified that he believed he had sufficient evidence to support a warrant. (JSMF ¶ 200; PRJSMF ¶ 200 (acknowledging that Defendant Arrington gave this testimony).) Defendant Arrington based his determination that probable cause existed to seek an arrest warrant for Plaintiff for theft by taking, in part, on documents provided by Defendant RFPRA and statements made by Defendant RFPRA's staff, including statements indicating that the gymnastics-related funds in Plaintiff's possession were funds that were Defendant RFPRA's property. (JSMF ¶ 210; PRJSMF ¶ 210.)

Defendant Arrington was not aware of anything that suggested to him that he should question the truthfulness or reliability of the statements made by Defendant RFPRA's staff. (JSMF ¶ 211; PRJSMF ¶ 211.) According to Defendant Arrington, Defendant RFRPA's staff's statements that the funds in Plaintiff's possession were Defendant RFPRA's property were confirmed when Plaintiff turned

AO 72A
(Rev.8/8
2)

funds over to Defendant RFPRA after being placed on administrative leave. (Aff. of Chris Arrington (Docket Entry No. 150-1) ¶ 7.)

Plaintiff contends that Defendant Garland hid receipt books that would have exonerated her. Plaintiff, however, testified at her deposition that it was possible that Defendant Garland "forgot about the receipt books." (JSMF ¶ 77; PRJSMF ¶ 77 (admitting proposed fact but arguing it is immaterial).) Ms. Earwood recalls that two receipt books were located in the gymnastics office and others "were located in the attached concession and storage area to the gymnastics office." (JSMF ¶ 165; PRJSMF ¶ 165.) Ms. Earwood was directed to go through the receipt books to ensure that there was a corresponding entry in the

AO 72A
(Rev.8/82)

ActiveNet system for each receipt. (JSMF ¶ 166; PRJSMF ¶ 166.)

5. Plaintiff's Resignation

On February 22, 2010, Plaintiff resigned her employment with Defendant RFPRA via an e-mail to Mr. Powell. (JSMF ¶ 2; PRJSMF ¶ 2.) According to Plaintiff, at least thirteen days passed between the date that Defendant Garland placed Plaintiff on administrative leave and the date on which she resigned, but Defendant Garland did not require Plaintiff to attend an employment-related investigative meeting during that period. (PSMF ¶ 20, as modified per JRPSMF ¶ 20.)

6. Plaintiff's Checking Account

AO 72A
(Rev.8/8
2)

During 2009, Plaintiff held her sole checking account (the "Account") with Heritage First Bank. (JSMF ¶ 41; PRJSMF ¶ 41.) Plaintiff paid all of her personal bills from the Account. (JSMF ¶ 42; PRJSMF ¶ 42.) Those payments included payments for Plaintiff's son's school lunches. (Pl. Dep. at 81-82.)

On July 24, 2009, Plaintiff deposited $1,582 into the Account, keeping $100 in cash and leaving a net deposit of $1,482, which was processed on July 27, 2009. (JSMF ¶ 43; PRJSMF ¶ 43.) The July 27, 2009, deposit consisted of $100 to pay truck insurance, plus thirteen payments of $114 to Plaintiff, via checks. (JSMF ¶¶ 44, 48; PRJSMF ¶¶ 44, 48.) The July 27, 2009, deposit also contained $182 intended to pay for AAU membership fees. (JSMF ¶ 45;

AO 72A
(Rev.8/8
2)

PRJSMF ¶ 45.) The Bridges' $114 check also was part of that deposit. (JSMF ¶ 46; PRJSMF ¶ 46.)

Plaintiff could not identify a withdrawal of the AAU membership fees from her August 2009 statement for the Account. (JSMF ¶ 49; PRJSMF ¶ 49.) Plaintiff also could not identify a withdrawal of the AAU membership fees from her September 2009 statement for the Account. (JSMF ¶ 50; PRJSMF ¶ 50.) Likewise, Plaintiff could not identify a withdrawal of the AAU membership fees from her October 2009 statement for the Account. (JSMF ¶ 51; PRJSMF ¶ 51.) Further, Plaintiff could not identify a withdrawal of the AAU membership fees from the November 2009 statement for the Account. (JSMF ¶ 52; PRJSMF ¶ 52.) Plaintiff also could not identify a withdrawal of the AAU membership fees

AO 72A
(Rev.8/82)

from her December 2009 statement for the Account. (JSMF ¶ 53; PRJSMF ¶ 53.)

7. Plaintiff's Arrest and Trial

On March 29, 2010, Defendant Arrington sought a warrant for Plaintiff's arrest. (JSMF ¶ 195; PRJSMF ¶ 195.) Plaintiff turned herself in at the Floyd County Sheriff's Office at approximately 9:50 a.m. on March 31, 2010. (JSMF ¶ 196; PRJSMF ¶ 196.) Plaintiff bonded out of the Floyd County Sheriff's Office at approximately 1:53 p.m. on that same day. (JSMF ¶ 197; PRJSMF ¶ 197.)

Ms. Earwood's involvement with the district attorney's office was similar to her involvement with Defendant Arrington's investigation. (JSMF ¶ 164; PRJSMF ¶ 164.)

AO 72A
(Rev.8/8
2)

Specifically, Ms. Earwood provided documents as requested. (JSMF ¶ 164; PRJSMF ¶ 164.)

According to Emily Johnson, the assistant district attorney who prosecuted Plaintiff, she determined that, based on her professional opinion, probable cause existed to prosecute Plaintiff for theft by taking. (JSMF ¶ 165; PRJSMF ¶ 165 (admitting that Ms. Johnson gave this testimony).) Ms. Johnson further stated that Defendant Garland and Defendant Arrington did not urge or influence her decision to prosecute Plaintiff for theft by taking. (Aff. of Emily Johnson (Docket Entry No. 150-6) ¶¶ 5-6.) According to Ms. Johnson, she reviewed the receipt books and determined that the receipt books did not exonerate Plaintiff. (Id. ¶ 7.) Ms. Johnson further stated that prior to

AO 72A
(Rev.8/82)

Plaintiff's trial, she informed Plaintiff and her attorney that she would dismiss the charges if Plaintiff could account for all the money that was missing. (Id. ¶ 8.) According to Ms. Johnson, Plaintiff and her attorney could not account for all of the missing money, and she proceeded to trial. (Id.)

On January 27, 2012, Defendant Garland sent an e-mail to the district attorney's office indicating that he would be at Plaintiff's criminal trial and stating, "I don't like to miss drama!" (Docket Entry No. 147-10.) On January 30, 2012, Defendant Garland sent an e-mail to the district attorney's office stating: "Let Emily know that I am ready to sit down with her again to go over the information she has to ensure that we have a solid case." (Docket Entry No. 147-12.)

AO 72A
(Rev.8/8
2)

On or about February 28, 2012, Ms. Johnson received an e-mail from Defendant Garland. (Johnson Aff. ¶ 9 & Ex. A.) That e-mail states, in relevant part:

> We are going to do some research on some of these, but for the most part, it is her word against ours that she spent all this money on "meet fees" and "job duties". Unless she can produce invoices that match these payments, this is all a smoke screen! The three checks to Haley Murray in excess of $5,000 are no way related to gymnastics, even though they both worked in the gym. There was something else altogether going on in those transactions.
>
> Based on this logic, who is to say the checks to Bob Johnstone aren't gymnastics related expenses?
>
> What i[t] does show is that she co-mingled funds. This was not some separate account that she was holding gymnastics money in. How did she know what was for gymnastics and what was for school lunches, daycare expenses, or getting her nails done?

AO 72A
(Rev.8/8
2)

(Id. Ex. A.) According to Ms. Johnson, that e-mail did not influence her decision that probable cause existed to prosecute Plaintiff for theft by taking. (Id. ¶ 10.) Ms. Johnson stated that she did not rely on that e-mail to determine whether to prosecute Plaintiff to trial. (Id. ¶ 11.) According to Ms. Johnson, she reviewed the file, concluded that probable cause existed, executed an amended accusation against Plaintiff for theft by taking, and prosecuted Plaintiff, and she made each decision herself, without influence from Defendant Garland, Defendant Arrington, anyone from Defendant Rome, or anyone from Defendant RFPRA. (Id. ¶ 12.)

At Plaintiff's criminal trial, evidence was presented indicating that: (1) Defendant RFPRA entrusted Plaintiff to

AO 72A
(Rev.8/8
2)

receive funds as payment from parents, including payments for meet fees and for leotards and other equipment (Criminal Trial Tr. (Docket Entry No. 91-2) at 189[3]); (2) Defendant RFRPA's representatives instructed Plaintiff to turn this money over to Defendant RFPRA to be deposited into Defendant RFPRA's account (id.); (3) Plaintiff was aware of that policy and refused to follow it even after Defendant RFRPRA refused her request to change it (id. at 183, 186, 189-90); (4) Plaintiff held approximately $2,900 of parent funds in her account for two to three weeks before turning the funds over to Defendant RFPRA after being placed on administrative leave pending an internal investigation (id. at 216, 247); (5) Plaintiff knew the funds

---

[3]When referring to the criminal trial transcript, the Court uses the page references in the Court's CM-ECF electronic filing system.

AO 72A
(Rev.8/82)

would have accrued interest if she had turned the funds over to Defendant RFPRA (id. at 247); (6) Plaintiff instead kept the funds in her personal account (id.); and (7) Plaintiff intended to circumvent Defendant RFPRA's policy so that all of her gymnasts, including those whose accounts with Defendant RFPRA were not current and who otherwise would not have been allowed to compete, could participate in meets (id. at 223). Plaintiff's trial testimony, however, indicated that the money she placed into her account belonged to the team parents, not to Defendant RFPRA, as the funds were intended for team meet fees and leotards, not for revenue to Defendant RFPRA. (Id. at 183-84, 191, 240.) Plaintiff further testified that she either paid out or turned over to Defendant RFPRA all of the parent funds she

AO 72A
(Rev.8/8
2)

received, and that none of the parents complained about not receiving items for which they had paid. (Id. at 190, 199, 202, 212, 215, 232, 235, 242.) Numerous parents of team members also testified that they received everything that they paid for, and that Plaintiff did not misappropriate their money. (Id. at 291, 294-95, 297-98, 300, 302-03, 306, 312, 316, 320-22, 324, 327, 330-31, 334, 340, 343.) Additionally, Defendant Arrington testified that it was his understanding that the team parents paid the meet fees to Plaintiff so that their children could compete in meets, that all the children were allowed to compete, and that this use of funds was not for Plaintiff's personal use. (Id. at 132.) According to Plaintiff, she reviewed her criminal trial testimony and there was nothing that she "stated incorrectly

AO 72A
(Rev.8/8
2)

or [that] was factually incorrect in [her] testimony." (JSMF ¶ 78; PRJSMF ¶ 78.)

At the close of the prosecution's case, Plaintiff moved for a directed verdict. (JSMF ¶ 140; PRJSMF ¶ 140.) The trial court denied that motion. (JSMF ¶ 141, as modified per PRJSMF ¶ 141.) The trial court noted, "there has been no evidence at all to dispute that this lady had at least the four thousand some odd dollars, so there's not – that's not a who done it." (Criminal Trial Tr. at 448.)

8. Defendants' States of Mind

Prior to January 2010, Plaintiff had not met or heard of Defendant Arrington. (JSMF ¶¶ 68-69; PRJSMF ¶¶ 68-69.) Plaintiff is not aware of any reason that Defendant Arrington had to dislike her or of any reason why Defendant Arrington

AO 72A
(Rev.8/8
2)

would want to do her harm. (JSMF ¶¶ 70-71; PRJSMF ¶¶ 70-71.) According to Plaintiff, the only reason why Defendant Arrington might have wanted to harm her in 2010 was that "he was doing it to build himself up." (JSMF ¶ 72; PRJSMF ¶ 72.) Defendant Arrington testified that during his investigation, he did not bear any ill will toward, or intend to hurt, Plaintiff. (JSMF ¶ 214; PRJSMF ¶ 214.)

According to Plaintiff, all of Defendant Rome's commissioners "should have asked questions" about her investigation. (JSMF ¶ 75; PRJSMF ¶ 75.) Plaintiff, however, has no knowledge that any of Defendant Rome's commissioners were aware of her investigation and the subsequent prosecution. (JSMF ¶ 76; PRJSMF ¶ 76.) Defendant Rome presented evidence indicating that the

AO 72A
(Rev.8/8
2)

issue of Plaintiff's prosecution was not brought to the attention of its city commission. (Rich Aff. ¶ 9; JSMF ¶ 243; PRJSMF ¶ 243.) Further, according to Defendant Rome, even if that issue had been brought to the city commission's attention, the city commission had no authority to take any action concerning it. (Rich Aff. ¶ 10; JSMF ¶ 244; PRJSMF ¶ 244.)

According to Defendant Garland, he did not discuss the decision to arrest Plaintiff with Defendant Arrington. (Garland Dep. at 105.) Defendant Garland also contends that he did not discuss with Defendant Arrington the decision to apply for an arrest warrant. (Id. at 105-06.) Defendant Arrington testified as follows concerning his conversation with Defendant Garland about the decision to

AO 72A
(Rev.8/8
2)

seek an arrest warrant for Plaintiff: "I believe I told [Defendant Garland] there were going to be criminal charges. I don't remember asking him for his input." (JSMF ¶ 201; PRJSMF ¶ 201 (admitting Defendant Arrington gave this testimony).) According to Defendant Arrington, Defendant Garland's "attitude from the start was pretty much whatever my investigation showed, that's what it showed." (JSMF ¶ 202; PRJSMF ¶ 202 (admitting Defendant Arrington gave this testimony but disputing its truth).) Defendant Arrington testified that Defendant Garland did not request, urge, or influence his decision to seek an arrest warrant for Plaintiff. (Arrington Aff. ¶ 8.) Further, according to Defendant Arrington, his determination that probable cause existed to seek a warrant for Plaintiff's

AO 72A
(Rev.8/8
2)

arrest was not urged or influenced by Defendant Garland, Defendant RFPRA, or Defendant RFPRA's staff. (Id. ¶ 11.)

Plaintiff testified that she is not aware of any evidence that Defendant Garland "ever either asked or told anyone to arrest [her]." (JSMF ¶ 79; PRJSMF ¶ 79 (admitting JSMF ¶ 79 but arguing it is immaterial).) Plaintiff is not aware of any evidence that Defendant Garland "asked, demanded, or requested anyone in the district attorney's office to prosecute [her]." (JSMF ¶ 80; PRJSMF ¶ 80.) Defendant Garland has not had a conversation with Plaintiff since she was placed on administrative leave. (JSMF ¶ 208; PRJSMF ¶ 208.)

9. Plaintiff's Bankruptcy Petition

AO 72A
(Rev.8/8
2)

On February 8, 2011, Plaintiff filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia. (JSMF ¶ 203; PRJSMF ¶ 203.) Plaintiff did not list any interest in any claim against Defendants on Schedule B of her petition. (JSMF ¶ 204; PRJSMF ¶ 204.) On May 19, 2011, the bankruptcy court issued an Order of Discharge of Debtor(s) With Order Approving Trustee's Report of No Distribution, Closing Estate and Discharging Trustee. (JSMF ¶ 205; PRJSMF ¶ 205.)

II. Summary Judgment Standard

Federal Rule of Civil Procedure 56(a) authorizes summary judgment when "there is no genuine dispute as to any material fact" and "the movant is entitled to a judgment

AO 72A
(Rev.8/8
2)

as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the initial burden of showing the Court that summary judgment is appropriate and may satisfy this burden by pointing to materials in the record. Reese v. Herbert, 527 F.3d 1253, 1269 (11th Cir. 2008) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)); Allen v. Bd. of Pub. Educ. for Bibb Cnty., 495 F.3d 1306, 1313 (11th Cir. 2007). Once the moving party has supported its motion adequately, the non-movant has the burden of showing summary judgment is improper by coming forward with specific facts that demonstrate the existence of a genuine issue for trial. Allen, 495 F.3d at 1314.

AO 72A
(Rev.8/8
2)

When evaluating a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. Optimum Techs., Inc., 496 F.3d at 1241. The Court also must "'resolve all reasonable doubts about the facts in favor of the non-movant.'" Rioux v. City of Atlanta, Ga., 520 F.3d 1269, 1274 (11th Cir. 2008) (quoting United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am., 894 F.2d 1555, 1558 (11th Cir. 1990)). Further, the Court may not make credibility determinations, weigh conflicting evidence to resolve disputed factual issues, or assess the quality of the evidence presented. Reese, 527 F.3d at 1271; Skop v. City of Atlanta, Ga., 485 F.3d 1130, 1140 (11th Cir. 2007).

AO 72A
(Rev.8/8
2)

Finally, the Court does not make factual determinations. In re Celotex Corp., 487 F.3d at 1328.

The standard for a motion for summary judgment differs depending on whether the party moving for summary judgment also bears the burden of proof on the relevant issue. As the United States Court of Appeals for the Sixth Circuit has noted:

> "When the moving party does not have the burden of proof on the issue, he need show only that the opponent cannot sustain his burden at trial. But where the moving party has the burden–the plaintiff on a claim for relief or the defendant on an affirmative defense–his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party."

Calderone v. United States, 799 F.2d 254, 259 (6th Cir. 1986) (quoting William W. Schwarzer, Summary Judgment Under the Federal Rules: Defining Genuine Issues of

AO 72A
(Rev.8/82)

Material Fact, 99 F.R.D. 465, 487-88 (1984)). "Where the movant also bears the burden of proof on the claims at trial, it 'must do more than put the issue into genuine doubt; indeed, [it] must remove genuine doubt from the issue altogether.'" Franklin v. Montgomery County, Md.,No. DKC 2005-0489, 2006 WL 2632298, at *5 (D. Md. Sept. 13, 2006) (alteration in original) (quoting Hoover Color Corp. v. Bayer Corp., 199 F.3d 160, 164 (4th Cir. 1999)).

III. Discussion

A. Defendant Rome

Defendant Rome argues that it cannot be liable in this action because Defendant Garland is an employee of Defendant RFPRA, an entirely separate legal entity from Defendant Rome. (Def. Rome's Br. Supp. Mot. Summ. J.

AO 72A
(Rev.8/8
2)

(Docket Entry No. 153-1) at 2-7.) Defendant Rome points out--and Plaintiff does not appear to dispute--that Plaintiff has not asserted a claim against Defendant Rome based on Defendant Arrington's actions. (Id. at 4.) The Court consequently concerns itself only with Plaintiff's allegations against Defendant Rome that are based on the actions of Defendant RFPRA and Defendant Garland.

A municipality may be held liable under 42 U.S.C. § 1983 "where a municipality's own violations were at issue but not where only the violations of others were at issue." Los Angeles Cnty., Cal. v. Humphries, 562 U.S. 29, ---, 131 S. Ct. 447, 453 (2010) (emphasis in original). The United States Court of Appeals for the Eleventh Circuit has noted:

> The Supreme Court has placed strict limitations on municipal liability under § 1983. A county's liability

AO 72A
(Rev.8/8
2)

> under § 1983 may not be based on the doctrine of respondeat superior. A county is liable under section 1983 only for acts for which [the county] is actually responsible. Indeed, a county is liable only when the county's official policy causes a constitutional violation. Thus, [a plaintiff] must identify a municipal policy or custom that caused [her] injury.

Grech v. Clayton Cnty., Ga., 335 F.3d 1326, 1329 (11th Cir. 2003) (first alteration in original) (internal quotation marks and citations omitted). To establish a municipality's policy, a plaintiff may "identify either (1) an officially promulgated [municipal] policy or (2) an unofficial custom or practice of the [municipality] shown through the repeated acts of a final policymaker for the [municipality]." Id.

The Court previously denied Defendant Rome's Motion to Dismiss, in which Defendant Rome argued, among other things, that Plaintiff's § 1983 claims against it failed because

AO 72A
(Rev.8/8
2)

Defendant Garland was not a policy maker for Defendant Rome. (Br. Supp. Mot. Dismiss (Docket Entry No. 33-1) at 30-32.) The Court denied that portion of the Motion to Dismiss based on the Court's reasoning in the portion of the Order addressing Defendant Floyd's Motion for Judgment on the Pleadings. (Order of July 1, 2013 (Docket Entry No. 43) at 72.) Defendant Floyd, in turn, had argued that Defendant Garland was not a policymaker for Defendant Floyd. (Br. Supp. Mot. J. Pleadings (Docket Entry No. 35-1) at 8.) The Court rejected that argument, noting:

> Plaintiff alleges that Defendants Floyd and Rome jointly control Defendant RFPRA. Defendants Rome, RFPRA, and Garland also submitted materials indicating that Defendant RFPRA was formed by agreement between Defendant Rome and Floyd. (Defs. Rome, RFPRA, and Garland's Mot. Dismiss Ex. A (Docket Entry No. 33-2) at 1-2, 19-20.) The agreements provide that Defendant

RFPRA would be governed by a board, which would consist of members appointed by Defendant Rome and Defendant Floyd, respectively. (Id. at 7-8, 21, 25; see also id. at 27 (Defendant Rome ordinance), 31-32 (Defendant Floyd resolution); Defs. Rome, RFPRA, and Garland's Mot. Dismiss Ex. C (Docket Entry No. 33-4) at 3-4 (Floyd County ordinance).) The ordinances accompanying the agreements also provide that Defendant RFPRA would "appoint a recreation director," and that "[t]he duties of said director shall be to plan, organize, direct and control a county-wide recreation program, pursuant to the policy established by [Defendant RFPRA] and within the budget submitted to and approved by the governing bodies of [Defendant Rome and Defendant Floyd]." (Defs.' Rome, RFPRA, and Garland's Mot. Dismiss Ex. A at 13, 29; see also id. at 33 (Defendant Floyd resolution containing same language).) The ordinances provide that, for years after 1982, Defendant Floyd "shall finance the entire" budget for Defendant RFPRA. (Id. at 14, 30; see also id. at 33 (Defendant Floyd resolution providing that "[o]perations and [m]aintenance shall be funded by [Defendant Floyd] tax base appropriation, and [Defendant Rome] shall not be required to contribute").) In 2007, Defendants RFPRA, Rome,

AO 72A
(Rev.8/8
2)

and Floyd entered into an agreement covering service agreement procedures, under which Defendant Floyd agreed to perform some services for Defendant RFPRA. (Id. at 40-44.)

The ordinances concerning Defendant RFPRA provide that Defendant RFPRA "shall be vested, except as restricted in this article, with all powers and duties as granted under O.C.G.A. § 36-64-1 et seq." (Defs. Rome, RFPRA, and Garland's Mot. Dismiss Ex. A at 28; see also Defs. Rome, RFPRA, and Garland's Mot. Dismiss Ex. C at 4 ("[Defendant RFPRA] shall be vested, except as restricted herein, with all rights, duties and responsibilities granted and given under O.C.G.A. sections 36-64-1 through 36-64-14.").) Defendant Rome's ordinance also states that Defendant RFPRA "is empowered to establish, revise and collect fees and rentals for the use of recreation areas and to impose conditions and set requirements governing such use." (Defs.' Rome, RFPRA, and Garland's Mot. Dismiss Ex. A at 28; see also id. at 34 (Defendant Floyd resolution containing same language).) Defendant Floyd's ordinance provides that Defendant RFPRA "shall be vested with the responsibility and duty to maintain, operate and administer the recreation program for [Defendant Rome and Defendant

AO 72A
(Rev.8/82)

Floyd], with fairness and equity to both areas, to the end that the recreation program in [Defendant Rome and Defendant Floyd] shall be the best program possible, and open to all citizens of the county." (Defs. Rome, RFPRA, and Garland's Mot. Dismiss Ex. C at 4.) Defendant Floyd's ordinance also states:

> [Defendant RFPRA] shall not take title to any of the capital improvements or lands connected with the recreation program, the title to the capital improvements and lands remaining in the respective governmental subdivisions, but its duty shall be to administer, operate and maintain the land and capital improvements and to provide a proper recreation program for all of the citizens as aforesaid, with each subdivision being responsible for capital improvements to its respective properties.

(Id.)

In light of the materials submitted by Defendants Rome, RFPRA, and Garland and the allegations contained in Plaintiff's Second Amended Complaint, the Court finds that, at this

AO 72A
(Rev.8/82)

> stage of the proceedings, Plaintiff has demonstrated that a relationship exists between Defendant Floyd and Defendant RFPRA so that Defendant Floyd may be liable for Defendant Garland's actions on behalf of Defendant RFPRA. As previously noted, Defendants Rome and Floyd jointly created Defendant RFPRA. Defendant RFPRA, in turn, is governed by a board of directors, at least some of whom are appointed by Defendant Floyd. Further, Defendant Floyd provides the funding for Defendant RFRPA. Under those circumstances, and given Plaintiff's allegations that Defendants Floyd and Rome jointly control Defendant RFPRA, the Court cannot find at this point that Defendant Floyd has no control over Defendant RFPRA.

(Order of July 1, 2013, at 31-37 (footnote omitted).)

The Court's July 1, 2013, Order, however, addressed a motion for judgment on the pleadings, not a motion for summary judgment. (See generally id.) As such, the Court was required to take as true Plaintiff's allegations that Defendants Rome and Floyd jointly controlled Defendant

AO 72A
(Rev.8/8
2)

RPFRA, and the Court also had to view the allegations in the light most favorable to Plaintiff. Under that standard of review, the Court found that Plaintiff's allegations were sufficient to survive Defendant Floyd's Motion for Judgment on the Pleadings and Defendant Rome's Motion to Dismiss. The Court certainly did not conclude for all purposes or as a matter of law that Defendant Rome had control over Defendant RFPRA so that Defendant Rome should be liable for Defendant RFRPA's actions.

The matter is currently before the Court on a motion for summary judgment, and both the procedural posture of the case and the standard of review are vastly different. At this stage of the proceedings, the Court must determine whether, viewing the evidence in the light most favorable to

AO 72A
(Rev.8/8
2)

Plaintiff, a genuine dispute remains as to whether Defendant Rome exercises control over Defendant RFPRA such that Defendant Rome should be held liable for Defendant RFPRA's actions, and, in turn, Defendant Garland's actions. For the following reasons, the Court finds that Defendant Rome did not have the required control over Defendant RFPRA to be held liable for its actions.

The evidence in the record, even viewed in the light most favorable to Plaintiff, indicates that Defendant RFPRA is a legal entity that is separate from Defendant Rome, not simply a joint venture between Defendant Rome and Defendant Floyd. Defendants Floyd and Rome created Defendant RFPRA as a separate entity and vested it with all powers granted by O.C.G.A. § 36-64-1 et seq. (Docket

AO 72A
(Rev.8/82)

Entry No. 33-1, 19, 26; Docket Entry No. 33-2 at 28, 32; Docket Entry No. 33-4 at 3.) Even if Defendant RFPRA is not a separate legal entity subject to suit, as Defendant RFPRA argues, the evidence in the record establishes that Defendant Rome did not have authority and responsibility over issues involving employees of Defendant RFPRA. Instead, Defendant RFPRA's board, which governed Defendant RFPRA, had responsibility for those issues. (Garland Dep. at 13; Docket Entry No. 33-2 at 29, 33; Rich Aff. ¶¶ 8, 12-13.) Employees of Defendant RFPRA are considered to be employees of Defendant RFPRA, not of Defendant Floyd or Defendant Rome. (Garland Dep. at 18; Rich Aff. ¶ 6.) Thus, Defendant Garland is not an employee of Defendant Rome. (Rich Aff. ¶ 7.)

AO 72A
(Rev.8/82)

Further, Defendant Rome produced evidence, which Plaintiff failed to rebut, demonstrating that Defendant Rome has no role or authority in matters involving Defendant RFPRA or its employees. (Rich Aff. ¶¶ 8, 11-12) Defendant Rome also produced evidence showing that Defendant Floyd did not retain authority to oversee, manage, or control the operations of Defendant RFPRA. (Id.) Plaintiff failed to rebut that evidence, and she has failed to show that Defendant Rome retained any real degree of control over Defendant RFPRA or over matters involving Defendant RFRPA's employees.

In response, Plaintiff argues that Defendant Rome has some control over Defendant RFPRA because it elects members to Defendant RFPRA's board. Defendant Rome,

AO 72A
(Rev.8/8
2)

however, can remove the board members that it appoints only for cause and only under limited circumstances. (Docket Entry No. 33-2 at 21, 27, 32; Docket Entry No. 33-4 at 3.) Under those circumstances, the Court finds that Defendant Rome does not control Defendant RFPRA simply because Defendant Rome can elect members to Defendant RFPRA's board.[4]

In sum, the evidence in the record, even viewed in the light most favorable to Plaintiff, fails to establish that Defendant Rome has control over Defendant RFPRA or its

---

[4]Defendant Floyd appoints the majority of the members to Defendant RFPRA's board, and it funds Defendant RFRPA's entire budget. In a separate Order, the Court concluded that Defendant Floyd did not control Defendant RFPRA. Defendant Rome appoints only three members to Defendant RFRPA's board and funds none of Defendant RFPRA's budget. If Defendant Floyd does not control Defendant RFPRA, Defendant Rome most certainly does not have control over Defendant RFPRA.

AO 72A
(Rev.8/8
2)

operations.[5] Under those circumstances, Defendant Rome cannot be liable for Defendant RFPRA's actions or for Defendant Garland's[6] actions.[7] The Court consequently

---

[5]Plaintiff's reliance on the joint employer theory of liability is misplaced. As an initial matter, that theory applies to federal employment law, and Plaintiff cites no authority indicating that it applies in the municipal liability context. In any event, that theory would not support liability here because Defendant Rome lacked control over Defendant RFPRA or its employment decisions. See Robbins v. Chatham Cnty., 863 F. Supp. 2d 1367, 1374-75 (S.D. Ga. Mar. 26, 2012) ("While there are many tests to determine whether an entity is an employer under various federal employment statutes, the [Eleventh Circuit] has identified one common inquiry: all of them seek to determine who (or which entity) is in control of the fundamental aspects of the employment relationship that gave rise to the claim. Under this inquiry, the lack of authority or control possessed by one entity over another's employment decisions precludes a finding of liability because the entity lacking control does not meet the definition of an employer under the requisite statute." (internal quotation marks and citation omitted)).

[6]Under § 1983, "municipalities may not be held liable for constitutional deprivations on the theory of respondeat superior." Doe v. Sch. Bd. of Broward Cnty., Fla., 604 F.3d 1248, 1263 (11th Cir. 2010) (emphasis omitted). "Instead, 'municipal liability is limited to action for which the municipality is actually responsible.'" Id. (quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 479-80 (1986)). "Therefore, a municipality may be held liable 'only if such

AO 72A
(Rev.8/82)

grants Defendant Rome's Motion for Summary Judgment

---

constitutional torts result from an official government policy, the actions of an official fairly deemed to represent government policy, or a custom or practice so pervasive and well-settled that it assumes the force of law.'" Id. (quoting Denno v. Sch. Bd. of Volusia Cnty., Fla., 218 F.3d 1267, 1276 (11th Cir. 2000)). "In addition to identifying conduct attributable to the municipality, a plaintiff alleging municipal liability under § 1983 must show that the municipal action was taken with the requisite degree of culpability, i.e., that the municipal action was taken with deliberate indifference to its known or obvious consequences." Id. (internal quotation marks and citation omitted). "Municipal liability from a single action or decision may only 'be deemed representative of the municipality' if 'the acting official [is] imbued with final policymaking authority.'" Id. at 1264 (alteration and emphasis in original) (quoting Denno, 218 F.3d at 1276). Regardless of whether Defendant Garland is a final policymaker for Defendant RFPRA, he clearly is not a final policymaker for Defendant Rome, because Defendant Rome does not control Defendant RFPRA.

[7]No evidence in the record indicates that Defendant Rome or its officials were deliberately indifferent to the actions of Defendant RFPRA or Defendant Garland. Indeed, Defendant Rome presented evidence indicating that the issue of Plaintiff's prosecution was not brought to the attention of its city commission. (Rich Aff. ¶ 9.) Plaintiff failed to rebut that evidence.

AO 72A
(Rev.8/8
2)

and dismisses all of Plaintiff's claims asserted against Defendant Rome.[8]

B. Defendant RFPRA's Motion for Summary Judgment

Defendant RFPRA filed its own Motion for Summary Judgment. (Docket Entry No. 154.) Defendant RFPRA argues that it is a legal entity separate and apart from Defendants Rome and Floyd, but that it is not a legal entity subject to suit. (Def. RFRPA's Br. Supp. Mot. Summ. J. (Docket Entry No. 154-1) at 3-4.)[9]

---

[8]In light of this conclusion, the Court need not and does not address Defendant Rome's other arguments in support of its Motion for Summary Judgment.

[9]Notably, Defendant RFPRA does not expressly argue that Defendant Garland is not a final policymaker for Defendant RFPRA for purposes of § 1983, and the Court consequently does not address that issue. (See generally Def. RFPRA's Br. Supp. Mot. Summ. J.)

AO 72A
(Rev.8/8
2)

Defendant RFPRA raised a similar argument in its second Motion to Dismiss. (Defs. Rome, RFPRA, and Garland's Br. Supp. Mot. Dismiss (Docket Entry No. 33-1) at 32-34.) The Court denied the argument in its July 1, 2013, Order, noting:

> The documents submitted by Defendants Rome, RFPRA, and Garland . . . demonstrate that Defendant Floyd and Rome created Defendant RFPRA by agreement, and that they specifically gave Defendant RFPRA many duties and powers. (Id. Exs. A-C.) Although the Court may determine after discovery that Defendant RFPRA is not a legal entity capable of suing or being sued, the Court simply cannot make that determination at this point based on Plaintiff's allegations and the materials in the record. The Court consequently denies this portion of the Motion to Dismiss.

(Order of July 1, 2013, at 73-74 (footnote omitted).)

Once again, the July 1, 2013, Order addressed a motion to dismiss, not a motion for summary judgment. As

AO 72A
(Rev.8/8
2)

such, the standard of review and the procedural posture of the case are vastly different.

Certainly, the evidence in the record indicates that Defendant RFPRA has power to enter into contracts, to establish and collect fees and rentals, to set requirements and regulations for use of recreational facilities, and to hire and control its own employees and that Defendant RFPRA is vested with all powers and duties as granted under O.C.G.A. § 36-64-1 et seq. The question remains, however, whether those powers mean that Defendant RFPRA is a legal entity subject to suit.

Rabun County Recreation Board v. Jarrard, 150 Ga. App. 56, 256 S.E.2d 661 (1979), provides little guidance on this issue. In that case, the county recreation board filed a

AO 72A
(Rev.8/82)

petition for writ of mandamus against the members of the county board of commissioners, arguing that the commissioners had not funded the recreation board with funds that the commissioners had collected. 150 Ga. App. at 56, 256 S.E.2d at 661-62. Before the scheduled hearing on the petition, the board of commissioners "passed a resolution abolishing the recreation board." Id., 256 S.E.2d at 662. The Georgia Court of Appeals held that "[a]s the Rabun County Board of Recreation no longer exists, it cannot sue as a legal entity." Id. (internal quotation marks and citation omitted). The concept that an entity that no longer exists lacks capacity to sue is not a novel one. Most importantly, the case did not explicitly address whether the board of recreation would have had the capacity to sue or

AO 72A
(Rev.8/8
2)

be sued if it had remained in existence. Id. The Court consequently must look to other authority to resolve this issue.

Likewise, Got-It Hardware & Gifts, Inc. v. City of Ashburn, 155 Ga. App. 214, 270 S.E.2d 380 (1980), does not provide much assistance to the Court. In that case, a hardware store sued the City of Ashburn and the Ashburn-Turner County Recreation Authority to collect for supplies purchased by the recreation authority. Id. at 214, 270 S.E.2d at 380. The city alleged that the recreation authority no longer existed because it had been abolished. Id. In response, the hardware store presented evidence indicating that the city currently possessed and used the supplies that the recreation authority purchased. Id. The Georgia Court

AO 72A
(Rev.8/8
2)

of Appeals reversed a grant of summary judgment in favor of the city, finding that "a fact issue exists as to whether the city appropriated the goods purchased to its own use after abolishing the authority," and noting that "[o]ne who accepts possession of goods and permits them to be used for his benefit cannot defeat an action for the purchase price by denying that the person who purchased them had authority to act as his agent." Id. The Georgia Court of Appeals then stated: "Furthermore, we find it unconscionable, perhaps even unconstitutional, for a governmental body to create a separate legal entity capable of incurring debts, to reap benefits from purchases made by the entity, and then to dissolve the entity with an express prohibition against paying any of the creditors." Id. Clearly, the circumstances

AO 72A
(Rev.8/8
2)

involved in Got-it Hardware & Gifts, Inc. are not the same as the ones in this case. The Court consequently must look to other authority to determine whether Defendant RFRPA is an entity capable of suing and being sued.

The Georgia Supreme Court has addressed the question of whether a governmental entity was an independent legal entity capable of suing an individual for contract damages. Clark v. Fitzgerald Water, Light & Bond Comm'n, 284 Ga. 12, 12, 663 S.E.2d 237, 238 (2008). The Georgia Supreme Court "granted certiorari to determine whether a governmental agency's power to sue and be sued may be implied solely from the express grant to the governmental agency of the power to contract." Id.

AO 72A
(Rev.8/8
2)

The Georgia Supreme Court observed: "As a general matter, there are three classes of legal entities with the inherent power to sue and be sued: (1) natural persons; (2) an artificial person (a corporation); and (3) such quasi-artificial persons as the law recognizes as being capable to sue." Clark, 284 Ga. at 12, 663 S.E.2d at 238 (internal quotation marks and citation omitted). An unincorporated association "may not sue or be sued in its own name unless authorized by law." Id. The Georgia Supreme Court noted:

> An express statutory provision, however, is not indispensable to an association's capacity to sue and be sued in the association's name; such a suit may be maintained by virtue of a necessary implication arising from statutory provisions, as in cases where an unincorporated association is recognized as a legal entity by statutes which do not in terms authorize it to sue or be sued.

Id. at 12-13, 663 S.E.2d at 238-39.

AO 72A
(Rev.8/8
2)

The Georgia Supreme Court noted that "the simple power to enter into a contract does not necessarily require any access to a court in order for that power to be exercised." Clark, 284 Ga. at 13, 663 S.E.2d at 239. "As such, the grant of such a power, standing alone, does not carry with it the implied power to sue or be sued." Id. The Georgia Supreme Court observed that although the commission had power to enter into contracts, that power "does not require access to a court to employ; therefore, it does not carry with it any implicit right to access the court system to enforce the power to contract." Id. Consequently, although the commission had power to enter contracts, it did not have the power to sue in its own name. Id.

AO 72A
(Rev.8/82)

In the July 1, 2013, Order, the Court declined to apply Clark to find that Defendant RFPRA was a legal entity subject to suit because "[t]he materials in the record . . . demonstrate that Defendant RFPRA has more powers than simply the ability to enter into contracts." (Order of July 1, 2013, at 74 n.10.) Once again, the July 1, 2013, Order addressed a motion to dismiss, and the Court had to accept Plaintiff's allegations as true and view the allegations in the light most favorable to Plaintiff. The procedural posture of the case necessarily impacted the Court's decision not to apply Clark to find that Defendant RFPRA lacked power to sue or be sued.

A more in-depth review of Clark indicates that its ruling hinged on whether a power granted to an unincorporated

AO 72A
(Rev.8/82)

association necessarily carried with it the right to sue or be sued. See Clark, 284 Ga. at 14, 663 S.E.2d at 239 ("[A]n analysis of Georgia precedent indicates that the mere power to enter contracts does not necessarily bring with it an implied power to sue."). If a power granted to the unincorporated association by the legislature necessarily carried with it the right to sue or be sued, then the unincorporated association would be a legal entity subject to suing and being sued. See id. at 13-14, 663 S.E.2d at 239-40 (observing that board of education had power to sue and be sued where it was empowered to acquire property by eminent domain, and noting that "[t]he school board's power to access the court's therefore, was necessarily included in its power to condemn"). Where, however, an

AO 72A
(Rev.8/8
2)

entity simply had a power to enter into contracts, that power did not give rise to the ability to sue or be sued because "the simple power to enter into a contract does not necessarily require any access to a court in order for that power to be exercised." Id. at 14-15, 663 S.E.2d at 239-40.

The Court therefore must determine whether the powers granted to Defendant RFPRA necessarily require access to the Court to exercise those powers. As Clark established, Defendant RFPRA would not have capacity to sue or be sued simply because it has the power to enter into contracts. Clark, 284 Ga. at 14, 663 S.E.2d at 240. Similarly, the rights to hold title to property, to set conditions and regulations for use of recreational facilities, to set and charge rental fees for facilities, and to hire and

AO 72A
(Rev.8/8
2)

control employees do not necessarily carry with them the right to sue and be sued. The Court's analysis consequently focuses on the powers granted to Defendant RFPRA under "O.C.G.A. § 36-64-1 et seq."

O.C.G.A. § 36-64-1 simply defines the term "governing body" as "the mayor and city council, the commissioner and commissioners, or either or both as the case may be, or the governing body, by whatever name called, of any municipality or county coming under this chapter." O.C.G.A. § 36-64-1. O.C.G.A. § 36-64-2 provides:

> The governing body of any municipality or county may dedicate and set apart for use as parks, playgrounds, and recreation centers and for other recreation purposes any lands or buildings or both, owned or leased by such municipality or county and not dedicated or devoted to another or inconsistent public use. Such municipality or county, in such manner as may now or hereafter

AO 72A
(Rev.8/8
2)

> be authorized or provided by law for the acquisition of lands or buildings for public purposes by the municipality or county, may acquire or lease lands or buildings or both, within or beyond the corporate limits of the municipality, for parks, playgrounds, recreation centers, and other recreational purposes. When the governing body of the municipality so dedicates, sets apart, acquires, or leases lands or buildings for such purposes, it may, on its own initiative, provide for their conduct, equipment, and maintenance, according to this chapter, by making an appropriation from the general municipal or county funds.

O.C.G.A. § 36-64-2. O.C.G.A. § 36-64-3, in turn, states:

> The governing body of any county or municipality may establish a system of supervised recreation. It may, by resolution or ordinance, vest the power to provide, maintain, and conduct parks, playgrounds, recreation centers, and other recreational activities and facilities in the board of education, park board, or other existing body or in a recreation board, as the governing body may determine. Any board so designated shall have the power to maintain and equip parks, playgrounds, recreation centers, and the buildings

AO 72A
(Rev.8/8
2)

> thereon; to develop, maintain, and operate all types of recreation facilities; and to operate and conduct facilities on properties controlled by other authorities. It may, for the purpose of carrying out the provisions of this chapter, employ playleaders, playground or community center directors, supervisors, recreation superintendents, or such other officers or employees as it deems are needed. The recreation authority is authorized to develop a program of recreational activities and services designated to meet the various leisure time interests of all people.

O.C.G.A. § 36-64-3.

O.C.G.A. § 36-64-3.1 permits a recreation board vested with power to maintain, establish, and conduct a supervised recreation system and facilities "for the purpose of producing hydroelectric power for ultimate sale to the public, to take all necessary or appropriate actions to permit the renovation, reconstruction, and operating of existing dam sites located on property which is owned by the governing

AO 72A
(Rev.8/8
2)

authority." O.C.G.A. § 36-64-3.1(b). The recreation board may, for those purposes, "grant or convey" or

> grant an option to obtain, a leasehold interest, a fee simple title, or other property interest in any such dam site and in such immediately adjacent land as may be necessary to accommodate facilities for the generation of hydroelectric power, together with all easements, rights of way, and rights to flood adjacent lands as may be necessary or appropriate, to electric utilities or other entities organized for the purpose of generating or distributing electricity for public use.

O.C.G.A. § 36-64-3.1(c). Further, the governing authority of the recreation system has power to

> enter into any contracts necessary or appropriate to determine the feasibility of renovating an existing dam for the generation of hydroelectric power; to enter into any contracts with electric utilities or other entities organized for the purpose of generating or distributing electricity for public use which are necessary or appropriate for the construction, use, operation, and maintenance of a hydroelectric facility at an existing dam site

> located on property owned by the governing authority; and to take all actions necessary or appropriate to obtain, and to transfer its rights under, any governmental license or other approval or exemption required or desired for a hydroelectric project.

O.C.G.A. § 36-64-3.1(d).

O.C.G.A. § 36-64-4 allows counties, municipalities, and school boards to "jointly provide, establish, maintain, and conduct a recreation system and jointly acquire property for and establish and maintain playgrounds, recreation centers, parks, and other recreational facilities and activities." O.C.G.A. § 36-4-4. O.C.G.A. § 36-64-5, in turn, states in relevant part: "If the governing body of any county or municipality determines that the power to provide, establish, conduct, and maintain a recreation system should be exercised by a park or recreation board, such governing

AO 72A
(Rev.8/8
2)

body, by resolution or ordinance, shall establish a recreation board in such municipality or county which shall possess all the powers and be subject to all the responsibilities of local authorities under this chapter." O.C.G.A. § 36-64-5. O.C.G.A. § 36-64-6 permits a park or recreation board or recreation authority "in which is vested the power to provide, establish, maintain, and conduct a recreation program [to] accept any grant or devise of real estate or any gift or bequest of money or other personal property, or any donation, the principal or income of which is to be applied for either temporary or permanent use for playgrounds or recreation purposes." O.C.G.A. § 36-64-6. Further, O.C.G.A. § 36-64-7 provides: "The governing body of any municipality or county, pursuant to law, may provide that the

AO 72A
(Rev.8/82)

bonds of the municipality or county may be issued, in the manner provided by law for the issuance of bonds for other purposes, for the purpose of acquiring lands or buildings for parks, playgrounds, recreation centers, and other recreational purposes and for the equipment thereof." O.C.G.A. § 36-64-7.

O.C.G.A. § 36-64-8 provides that voters may present a petition to establish a recreation system or that a municipality or county, on its own, may appropriate funds for and establish a recreation system. O.C.G.A. § 36-64-8. O.C.G.A. § 36-64-9 provides that if a voters' petition prevails in an election to establish a recreation system, "the governing body of the municipality or county, by resolution or ordinance, shall provide for the establishment,

AO 72A
(Rev.8/8
2)

maintenance, and conduct of the supervised recreation system as they may deem it advisable and practicable to provide and maintain out of the tax money thus voted." O.C.G.A. § 36-64-9. Further, O.C.G.A. § 36-64-9 states: "The governing body, by appropriate resolution or ordinance, may designate the board or commission to be vested with the powers, duties, and obligations necessary for the establishment, maintenance, and conduct of such recreation system, as provided in this chapter." O.C.G.A. § 36-64-9. O.C.G.A. § 36-64-10 provides that a municipality or a county adopting the provisions of the chapter at an election must annually levy and collect a recreation tax. O.C.G.A. § 36-64-10. O.C.G.A. § 36-64-11, in turn, states:

> The cost and expense of the establishment, maintenance, and conduct of a supervised

AO 72A
(Rev.8/82)

> recreation system of parks, playgrounds, recreation centers, and other recreational facilities and activities shall be paid out of taxes or other money received for this purpose. The recreation board or commission or other authority in which is vested the power to provide, establish, conduct, and maintain a supervised recreation system and facilities shall have exclusive control of all moneys collected or donated to the credit of the "recreation fund."

O.C.G.A. § 36-64-11. Finally, O.C.G.A. § 36-64-12 provides that "it shall not be mandatory that a municipality or county establish, maintain, or conduct a recreation system." O.C.G.A. § 36-64-12.

The above review of the powers granted to a recreational authority or recreational board under O.C.G.A. § 36-64-1 et seq. quite clearly demonstrates that none of the powers delineated in the statutes expressly includes the power to sue or to be sued. Further, none of the powers

AO 72A
(Rev.8/8
2)

granted to a recreational authority or a recreational board under those statutes necessarily requires access to a court to employ those powers. Clark, 284 Ga. at 15, 663 S.E.2d at 240. As such, a grant of those powers, "standing alone, does not carry with it the implied power to sue or be sued." Id. The Court consequently finds that Defendant RFPRA is not a legal entity subject to suit.

Plaintiff argues that if Defendant RFPRA is not a legal entity subject to suit, then Defendants Floyd and Rome necessarily must be liable for Defendant RFPRA's actions. (See generally Pl.'s Resp. Def. RFPRA's Mot. Summ. J. (Docket Entry No. 163.) Plaintiff, however, cites no authority to support her position, and the Court's own research has uncovered no such authority. Instead, this

AO 72A
(Rev.8/8
2)

situation appears more akin to one involving a suit against a county school board. Under Georgia law, a county school board is not a legal entity subject to suit. Winchester Constr. Co. v. Miller Cnty. Bd. of Educ., 821 F. Supp. 697, 699 (M.D. Ga. May 19, 1993). The proper remedy is to name the individual members of the board as defendants. Id. at 699-700. Thus, it would appear that a plaintiff who sought to sue for actions of Defendant RFPRA or its employees would not be left without a remedy. This issue is not one that the Court must resolve in this Order, however. For purposes of this Order, it is enough to conclude that Defendant RFPRA is not a legal entity subject to suit.[10]

[10] In light of this conclusion, the Court need not and does not address Defendant RFPRA's other arguments in support of its

AO 72A
(Rev.8/82)

In sum, the Court finds that Defendant RFPRA is not a legal entity subject to suit. The Court consequently grants Defendant RFPRA's Motion for Summary Judgment with respect to all of Plaintiff's claims asserted against it.

C. § 1983 Claims Against Defendant Arrington

Defendant Arrington also filed a separate Motion for Summary Judgment. (Docket Entry No. 152.) In that Motion, Defendant Arrington argues, among other things, that Plaintiff's § 1983 malicious prosecution claim fails as a matter of law. (Def. Arrington's Br. Supp. Mot. Summ. J. (Docket Entry No. 152-1) at 30-37.) Defendant Arrington argues that qualified immunity protects him with respect to Plaintiff's § 1983 claim asserted against him in his individual

---

Motion for Summary Judgment.

AO 72A
(Rev.8/8
2)

capacity. (Br. Supp. Mot. Dismiss at 31-35.) The Court first sets forth the general principles governing qualified immunity, and then applies those principles to this case.

1. Qualified Immunity: In General

Qualified immunity protects government officials performing discretionary functions from suits for damages brought against them in their individual capacities. Rioux v. City of Atlanta, Ga., 520 F.3d 1269, 1282 (11th Cir. 2008). The Eleventh Circuit applies a two-part analysis to determine whether a defendant is entitled to qualified immunity. Crawford v. Carroll, 529 F.3d 961, 977 (11th Cir. 2008).

Under the qualified immunity analysis used in this Circuit, the defendant first must prove that the allegedly

AO 72A
(Rev.8/8
2)

unconstitutional conduct occurred while the defendant official was acting within the scope of the official's discretionary authority. Al-Amin v. Smith, 511 F.3d 1317, 1324 (11th Cir. 2008). To determine whether the defendant acted within his discretionary authority, the Court asks "whether the [defendant] was (a) performing a legitimate job-related function (that is, pursuing a job-related goal), (b) through means that were within [the defendant's] power to utilize." Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1265 (11th Cir. 2004). In making this determination, the Court does not inquire "'whether it was within the defendant's authority to commit the allegedly illegal act.'" Id. at 1266 (quoting Harbert Int'l, Inc. v. James, 157 F.3d 1271, 1282 (11th Cir. 1998)). Instead, the Court must "look

AO 72A
(Rev.8/8
2)

to the general nature of the defendant's action, temporarily putting aside the fact that it may have been committed for an unconstitutional purpose, in an unconstitutional manner, to an unconstitutional extent, or under constitutionally inappropriate circumstances." Id. Once a defendant shows that he or she acted within his or her discretionary authority, the burden shifts to the plaintiff to demonstrate that (1) the defendant's conduct violated the plaintiff's constitutional right and (2) that the constitutional right violated was "clearly established." Al-Amin, 511 F.3d at 1324. If the plaintiff fails to make either of those showings, the defendant is entitled to qualified immunity. See Smith ex rel. Smith v. Siegelman, 322 F.3d 1290, 1295 (11th Cir. 2003) ("Without a constitutional violation, there can be no

AO 72A
(Rev.8/82)

violation of a clearly established right."). The Supreme Court has observed that courts "should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." Pearson v. Callahan, 129 S. Ct. 808, 818 (2009).

For a constitutional right to be clearly established, the contours of that right must be clear enough that reasonable officials would understand that what they are doing violates that right. Rioux, 520 F.3d at 1282. To make this showing, a plaintiff need not show that the official's "conduct specifically has been held unlawful"; instead, the plaintiff simply must demonstrate that, in light of pre-existing law,

AO 72A
(Rev.8/8
2)

the unlawfulness of the official's conduct was apparent. Bates v. Harvey, 518 F.3d 1233, 1248 (11th Cir. 2008). In determining whether the unlawfulness of the official's act was apparent, the Court must ask "whether the state of the law at the time [of the official's action] gave [the official] 'fair warning' that [his or her] conduct was unconstitutional." Id. (quoting Hope v. Pelzer, 536 U.S. 730, 741 (2002)).

The Eleventh Circuit has explained that a defendant may have received "fair warning" in one of three ways. Vinyard v. Wilson, 311 F.3d 1340, 1350 (11th Cir. 2002). "First, conduct may be clearly established as illegal through explicit statutory or constitutional statements." Griffin Indus., Inc. v. Irvin, 496 F.3d 1189, 1208-09 (11th Cir. 2007)

AO 72A
(Rev.8/8
2)

(citing Vinyard, 311 F.3d at 1350).[11] "Second, certain 'authoritative judicial decision[s]' may establish broad principles of law that are clearly applicable in a variety of factual contexts going beyond the particular circumstances of the decision that establishes the principle." Id. at 1209 (alteration in original) (citing Vinyard, 311 F.3d at 1351). "Third, and most common, is the situation where case law previously elucidated in materially similar factual circumstances clearly establishes that the conduct is unlawful." Id. (citing Vinyard, 311 F.3d at 1351-52).

---

[11]This exception, however, "is a narrow one" and applies "only when the conduct in question is so egregious that the government actor must be aware that he [or she] is acting illegally." Thomas ex rel. Thomas v. Roberts, 323 F.3d 950, 955 (11th Cir. 2003).

AO 72A
(Rev.8/82)

2. Application to this Case

As an initial matter, "[t]here is no question that an arrest without probable cause to believe a crime has been committed violates the Fourth Amendment." Madiwale v. Savaiko, 117 F.3d 1321, 1324 (11th Cir. 1997). Qualified immunity, however, will protect Defendant Arrington as to Plaintiff's § 1983 malicious prosecution claim if arguable probable cause existed for Defendant Arrington to prosecute Plaintiff. Storck v. City of Coral Springs, 354 F.3d 1307, 1315 (11th Cir. 2003). "'Arguable probable cause exists when an officer reasonably could have believed that probable cause existed, in light of the information the officer possessed.'" Id. (quoting Durruthy v. Pastor, 351 F.3d 1080, 1092 (11th Cir. 1997)) (internal quotation marks

AO 72A
(Rev.8/8
2)

omitted). "'Even law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity.'" Wood v. Kesler, 323 F.3d 872, 878 (11th Cir. 2003) (quoting Hunter v. Bryant, 502 U.S. 224, 227 (1991)). Moreover, qualified immunity applies so long as an officer "has 'arguable probable cause to arrest for any offense.'" Merenda v. Tabor, No. 12-12562, 2013 WL 396122, at *2 (11th Cir. Feb. 1, 2013) (quoting Grider v. City of Auburn, Ala., 618 F.3d 1240, 1257 (11th Cir. 2010)).

When determining whether probable cause exists to support an arrest, the Court considers whether the arresting officer's actions were "objectively reasonable based on the totality of the circumstances.'" Kingsland, 382 F.3d at 1226 (citing Rankin v. Evans, 133 F.3d 1425, 1435 (11th Cir.

AO 72A (Rev.8/82)

1998)). "'This standard is met when the facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.'" Id. (quoting Rankin, 133 F.3d at 1435 (internal quotation marks omitted)).

"'Although probable cause requires more than suspicion, it does not require convincing proof, and need not reach the [same] standard of conclusiveness and probability as the facts necessary to support a conviction.'" Wood, 323 F.3d at 878 (quoting Lee v. Ferraro, 284 F.3d 1188, 1195 (11th Cir. 2002) (alteration in original)). The officer's subjective intent is immaterial, and the Court

AO 72A
(Rev.8/8
2)

instead must consider the facts objectively. Williams v. City of Homestead, Fla., 206 F. App'x 886, 888 (11th Cir. 2006) (per curiam).

The Court previously denied Defendant Arrington's Motion to Dismiss on qualified immunity grounds, noting:

> Although the question is a close one, Plaintiff's allegations and the testimony from Plaintiff's criminal trial, viewed in the light most favorable to Plaintiff, adequately demonstrate that Defendant Arrington lacked arguable probable cause to arrest Plaintiff for the offenses of theft by taking, theft by deception, or theft by conversion. Defendant Arrington testified that he arrested Plaintiff because she took money from parents for meet fees, uniforms, and other equipment, and deposited it in her own account, in violation of Defendant RFRPA's policies and her supervisors' instructions. (Mot. Dismiss Ex. B, Part 2, at 131, 134-36.) According to Defendant Arrington, it did not matter to him if the parents got what they paid for or whether Plaintiff used the funds for personal use--his focus was on the fact that Plaintiff had the money and did not turn it over to Defendant

AO 72A
(Rev.8/8
2)

> RFPRA. (Id. at 126, 131, 133-36, 140.) As previously discussed, probable cause--or even arguable probable cause--would not support a charge of theft by taking, theft by deception, or theft by conversion under those circumstances. The Court consequently must find that Defendant Arrington lacked arguable probable cause to arrest Plaintiff, at least at this stage of the proceedings.
>
> As discussed above, Plaintiff's allegations and the transcript of Plaintiff's criminal trial, viewed in the light most favorable to Plaintiff, are sufficient to show that Defendant Arrington's actions violated clearly established law for purposes of the Motion to DIsmiss. The Court therefore cannot find that Defendant Arrington is entitled to qualified immunity at this stage of the proceedings.

(Order of Dec. 3, 2013, at 57-59.) Once again, the procedural posture of the case was different when the Court issued its December 3, 2013, Order, and the Court had to take those allegations as true and view the allegations in the light most favorable to Plaintiff. That ruling was not binding

AO 72A
(Rev.8/8
2)

on the Court or the Parties for all purposes of the litigation. The Court simply found that Defendant Arrington was not entitled to qualified immunity for purposes of his Motion to Dismiss. The Court evaluates the evidence and the law anew in connection with Defendant Arrington's Motion for Summary Judgment.

As an initial matter, Plaintiff has conceded that Defendant Arrington acted within his discretionary authority when he took the actions that gave rise to this lawsuit. (See Pl.'s Br. Supp. Mot. Summ. J. (Docket Entry No. 147-1) at 26 (conceding that Defendant Arrington was "acting within the scope of [his] duties as Detective with the City of Rome Police Department"). The Court therefore must determine whether Defendant Arrington violated clearly established

AO 72A
(Rev.8/8
2)

law. For the reasons discussed below, the Court finds that Plaintiff has failed to show that Defendant Arrington's actions violated clearly established law.

The evidence in the record at this stage of the proceedings, even viewed in the light most favorable to Plaintiff as the non-movant, shows that Defendant Arrington had arguable probable cause to arrest Plaintiff for the offense of theft by taking. O.C.G.A. § 16-8-2 governs the offense of theft by taking, and provides: "A person commits the offense of theft by taking when he unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of the property, regardless of the manner in which the property is taken or appropriated." O.C.G.A. § 16-8-2.

AO 72A (Rev.8/82)

Under Georgia law, the State "may indict an individual for theft by taking, yet prove the elements of theft by deception." Elder v. State, 230 Ga. App. 122, 123, 495 S.E.2d 596, 597 (1998). Theft by deception occurs when a defendant "'obtains property by any deceitful means or artful practice with the intention of depriving the owner of the property.'" Id. at 124, id. (quoting O.C.G.A. § 16-8-3(a)). For purposes of the theft by taking and theft by conversion statutes, "'deprive' means, without justification: (A) To withhold property of another permanently or temporarily; or (B) To dispose of the property so as to make it unlikely that the owner will recover it." O.C.G.A. § 16-8-1(1). Further, for purposes of those offenses, "'[p]roperty of another' includes property in which any person other than the

AO 72A
(Rev.8/8
2)

accused has an interest but does not include property belonging to the spouse of an accused or to them jointly." O.C.G.A. § 16-8-1(3).

Under Georgia's theft by taking statute, "regardless of whether an individual intends to take another's property and withhold it permanently, his intent to take it for his own temporary use without the owner's authorization evinces an intent to commit a theft." Tate v. Holloway, 231 Ga. App. 831, 834, 499 S.E.2d 72, 74 (1998) (internal quotation marks and citation omitted). Further, "[t]he purpose of [the theft by conversion] statute is to punish fraudulent conversion, not breach of contract, and it is the requirement that the State prove fraudulent intent that prevents the statute from being unconstitutional." Barrett v. State, 207

AO 72A
(Rev.8/8
2)

Ga. App. 370, 371, 427 S.E.2d 845, 846 (1993). A court may not infer criminal intent "from nothing more than the fact of [a breach of contract]." Id.

When Defendant Arrington determined that probable cause existed to seek an arrest warrant for Plaintiff, he was aware of information obtained from documents provided by Defendant RFPRA and statements made by its staff indicating that the gymnastics-related funds that Plaintiff held were Defendant RFRPA's property. (JSMF ¶¶ 210-11; PRJSMF ¶¶ 210-11.) Further, Plaintiff admitted that there was nothing to suggest to Defendant Arrington that he should question the truthfulness or reliability of the statements made by Defendant RFPRA's staff. (JSMF ¶¶ 210-11; PRJSMF ¶¶ 210-11.) Defendant Arrington was

AO 72A
(Rev.8/8
2)

aware that Plaintiff had turned in $4,320 to Defendant RFPRA, and he also had information indicating that Plaintiff did not have permission to keep the money in her personal account but instead should have turned it in to Defendant RFPRA. (JSMF ¶ 139; PRJSMF ¶ 139.) Moreover, Defendant RFPRA's staff told Defendant Arrington that money paid as fees was supposed to be turned over to Defendant RFPRA. (Criminal Trial Tr. at 415-17, 424.) Defendant Arrington was told that although there was no written policy that Plaintiff was supposed to turn the money over to Defendant RFPRA, Plaintiff had been instructed to do so. (JSMF ¶ 199; PRJSMF ¶ 199.) Defendant Arrington inferred from the fact that Plaintiff did not turn the money into Defendant RFPRA when she was supposed to that

AO 72A
(Rev.8/8
2)

Plaintiff intended either to use the money for her own use or deprive Defendant RFPRA of the use of that money. (JSMF ¶ 198; PRJSMF ¶ 198.) In Defendant Arrington's opinion, the statements by Defendant RFPRA's staff indicating that funds in Plaintiff's possession were Defendant RFPRA's property were confirmed when Plaintiff turned funds over to Defendant RFPRA after being placed on administrative leave. (Arrington Aff. ¶ 7.) Further, contrary to Plaintiff's arguments, the evidence fails to establish that Defendant Garland controlled or masterminded the investigation, or that he urged or influenced Defendant Arrington's decision to seek an arrest warrant for Plaintiff. (Arrington Aff. ¶ 8; Arrington Dep. at 59.)

AO 72A
(Rev.8/8
2)

Under those circumstances, at least arguable probable cause existed for Defendant Arrington to seek an arrest warrant against Plaintiff for theft by taking. Regardless of whether Plaintiff converted funds to her own use or used the funds for non-gymnastics-related purposes, Defendant Arrington had information indicating that Plaintiff had received money that was supposed to be turned in to Defendant RFPRA for deposit into its accounts and that Plaintiff failed to turn that money over to Defendant RFPRA, despite having been instructed to do so. Under those circumstances, a reasonable police officer in Defendant Arrington's position would have at least arguable probable cause to arrest Plaintiff for theft by taking. Specifically, the evidence, even viewed in the light most favorable to

AO 72A
(Rev.8/8
2)

Plaintiff, would permit a reasonable police officer in Defendant Arrington's position to conclude that Plaintiff had taken property belonging to Defendant RFPRA with the intent to deprive Defendant RFPRA of that property.

Plaintiff argues, perhaps correctly, that Defendant Arrington did not conduct an ideal or exceedingly thorough investigation. Any alleged deficiencies in Defendant Arrington's investigation, however, are not relevant so long as he had arguable probable cause to seek an arrest warrant for Plaintiff. For the reasons discussed above, arguable probable cause existed, and Defendant Arrington is entitled to qualified immunity.

Defendant Arrington also points out that, as the arresting officer, he would not be liable under § 1983 for

AO 72A
(Rev.8/8
2)

Plaintiff's continued prosecution and trial. See Whiting v. Traylor, 85 F.3d 581, 586 n.10 (1996) ("In many cases, arresting officers will not be responsible for the continuation of the prosecution because the prosecutor (or some other factor) will break the causal link between defendants' conduct and plaintiff's injury."). Although Defendant Arrington made the decision to obtain an arrest warrant against Plaintiff, the evidence demonstrates that he did not make the decision to pursue an indictment against Plaintiff or to proceed to trial against Plaintiff. (Johnson Aff. ¶¶ 3-4, 6, 12.) Further, absolutely no evidence indicates that Defendant Arrington influenced the decision to obtain an indictment against Plaintiff or to proceed to trial against Plaintiff. (Id. ¶¶ 6, 12.) Under those circumstances,

AO 72A
(Rev.8/8
2)

Defendant Arrington is not liable under § 1983 for Plaintiff's continued prosecution and trial. See Eubanks v. Gerwen, 40 F.3d 1157, 1161 (11th Cir. 1994) (finding arresting police officers were entitled to summary judgment on § 1983 malicious prosecution claim where "they did not make the decision as to whether or not to prosecute [the plaintiff]; nor did they act in such a way as improperly to influence the decision by the State Attorney in that regard").

3. Summary

For the reasons discussed above, qualified immunity protects Defendant Arrington with respect to Plaintiff's § 1983 malicious prosecution claim. The Court therefore

AO 72A
(Rev.8/8
2)

grants Defendant Arrington's Motion to Dismiss as to that claim.[12]

D. § 1983 Claims Against Defendant Garland

Defendant Garland also asserts the defense of qualified immunity with respect to Plaintiff's § 1983 malicious prosecution claim asserted against him. Applying the standards set forth supra Part III.C., the Court concludes that at least arguable probable cause existed to support the decision to seek an arrest warrant against Plaintiff. Defendant Garland consequently is entitled to

[12]In light of this conclusion, the Court need not and does not address Defendant Arrington's other arguments relating to Plaintiff's § 1983 malicious prosecution claim.

AO 72A
(Rev.8/82)

qualified immunity with respect to Plaintiff's § 1983 malicious prosecution claim.[13]

The Court also observes that no evidence supports a conclusion that Defendant Garland unfairly or unduly influenced or urged Defendant Arrington to seek a warrant for Plaintiff's arrest. Indeed, the evidence in the record points to a contrary conclusion. (Arrington Dep. at 59; Arrington Aff. ¶ 11.) At most, the evidence demonstrates that Defendant Garland contacted Defendant Rome's police department and indicated that an employee theft may have occurred. The evidence, however, demonstrates that

---

[13]Plaintiff has conceded that Defendant Garland was "acting within the scope of [his] duties as . . . Executive Director of [Defendant] RFPRA." (Pl.'s Br. Supp. Mot. Summ. J. at 26-27.) The Court consequently finds that Defendant Garland was acting within his discretionary authority when he took the actions of which Plaintiff complains.

AO 72A
(Rev.8/8
2)

Defendant Arrington investigated the matter and came to his own conclusions. (Arrington Dep. at 59; Arrington Aff. ¶ 11.) Consequently, Defendant Garland cannot be held liable for Defendant Arrington's actions.[14]

Likewise, even if Defendant Garland could be held responsible for the decision to arrest Plaintiff, he would not be responsible for her indictment and continued prosecution. The evidence does not indicate that Defendant Garland influenced Ms. Johnson's decision to seek an indictment for Plaintiff and to prosecute Plaintiff for trial. Instead, the evidence demonstrates otherwise.

---

[14]Defendant Garland may not have acted with the purest of intentions when he contacted Defendant Rome's police department. Subjective intent, however, is irrelevant to the arguable probable cause analysis. Williams v. City of Homestead, Fla., 206 F. App'x 886, 888 (11th Cir. 2006) (per curiam).

AO 72A (Rev.8/8 2)

(Johnson Aff. ¶¶ 3-5, 12.) Defendant Garland consequently would not be liable for those events.[15]

In sum, the Court finds that qualified immunity protects Defendant Garland with respect to Plaintiff's § 1983 malicious prosecution claim. The Court therefore grants this portion of Defendant Garland's Motion for Summary Judgment.[16]

---

[15]Certainly, the evidence shows that Defendant Garland sent what appear to be ill-advised e-mails to Ms. Johnson. (Docket Entry Nos. 147-10, 147-11, 147-12.) Ms. Johnson, however, has stated that Defendant Garland and his e-mails did not influence her decision that probable cause existed to prosecute Plaintiff. (Johnson Aff. ¶¶ 10, 12.) Absent evidence to the contrary, causation is not present here.

[16]In light of this conclusion, the Court need not and does not address Defendant Garland's other arguments concerning the § 1983 claim.

AO 72A (Rev.8/82)

E. Plaintiff's Motion for Summary Judgment

Plaintiff filed her own Motion for Summary Judgment, arguing, among other things, that she is entitled to summary judgment in her favor on her § 1983 malicious prosecution claim against Defendants Garland and Arrington. (See generally Pl.'s Br. Supp. Mot. Summ. J.) To obtain summary judgment in her favor on those claims, however, Plaintiff must show that no reasonable juror could do other than find for Plaintiff on the claims. Viewing the evidence in the light most favorable to Defendants Garland and Arrington, at least arguable probable cause existed for Plaintiff's arrest and prosecution. Defendants Garland and Arrington therefore would be entitled to qualified immunity for those claims. Consequently, Plaintiff is not entitled to

AO 72A
(Rev.8/8
2)

summary judgment in her favor on the claims, and the Court denies this portion of Plaintiff's Motion for Summary Judgment.

IV. State Law Claims

Plaintiff's remaining claims against Defendants Garland and Arrington all arise under state law. Plaintiff did not allege that diversity jurisdiction existed. (Second Am. Compl. (Docket Entry No. 29) ¶ 2.) Instead, Plaintiff alleged that "[t]he Court has supplemental jurisdiction over [Plaintiff's] state law claims pursuant to 28 United States Code § 1367." (Id.)

Under 28 U.S.C. § 1367(c), a district court has discretion to decline to exercise further jurisdiction over pendent state law claims if the court has dismissed all

AO 72A
(Rev.8/8
2)

claims over which it had original jurisdiction. 28 U.S.C. § 1367(c); Pintano v. Miami-Dade Hous. Agency, 501 F.3d 1241, 1242 (11th Cir. 2007); Parker v. Scrap Metal Processors, Inc., 468 F.3d 733, 743 (11th Cir. 2006). A court should consider factors such as "judicial economy, convenience, fairness, and comity" when determining whether to decline supplemental jurisdiction over state law claims after dismissing all of the claims over which the court has original jurisdiction. Rowe v. City of Fort Lauderdale, 279 F.3d 1271, 1288 (11th Cir. 2002). The Eleventh Circuit encourages district courts to dismiss remaining state law claims where the district courts have dismissed all of the pending federal claims prior to trial. Raney v. Allstate Ins. Co., 370 F.3d 1086, 1089 (11th Cir. 2004).

AO 72A
(Rev.8/8
2)

Here, the Court has dismissed the only claims over which the Court has original jurisdiction. Applying the standard set forth above, the Court exercises its discretion under § 1367(c) to decline further supplemental jurisdiction over Plaintiff's remaining state law claims against Defendants Arrington and Garland. Specifically, Plaintiff's state law claims form the bulk of Plaintiff's Second and Third Amended Complaints, and at least one of the claims presents a serious state law question.[17] The Georgia state courts are better-equipped to address those claims. Because the Court has not reached the merits of those claims and dismisses the claims without prejudice, Plaintiff

[17]It is questionable whether Plaintiff may maintain a claim under O.C.G.A. § 36-33-4. The state courts are better-equipped to make that determination.

AO 72A
(Rev.8/8
2)

may re-file the claims in state court within six months of the date of this Order.

IV. Conclusion

ACCORDINGLY, the Court **DENIES** Plaintiff's Motion for Partial Summary Judgment [147], **GRANTS IN PART AND DENIES WITHOUT PREJUDICE IN PART** Defendant Garland's Motion for Summary Judgment [151], **GRANTS IN PART AND DENIES WITHOUT PREJUDICE IN PART** Defendant Arrington's Motion for Summary Judgment [152], **GRANTS** Defendant Rome's Motion for Summary Judgment [153], and **GRANTS** Defendant RFPRA's Motion for Summary Judgment [154]. The Court **DISMISSES** Plaintiff's claims against Defendants Rome and RFPRA, as well as Plaintiff's § 1983 malicious prosecution claims

AO 72A
(Rev.8/8
2)

against Defendants Garland and Arrington. The Court **DECLINES TO EXERCISE SUPPLEMENTAL JURISDICTION OVER** Plaintiff's remaining state law claims, including: (1) the portion of Count III asserting a state law malicious prosecution claim against Defendant Garland; (2) Count V, which asserted a state law intentional infliction of emotional distress claim against Defendant Garland; (3) Count VI, which asserted a claim under O.C.G.A. § 36-33-4 against Defendant Garland; (4) the portion of Count VII asserting a punitive damages claim against Defendant Garland, to the extent that claim arises from Georgia law; (5) Count VIII, which asserted a state law malicious prosecution claim against Defendant Arrington; (6) Count X, which asserted an O.C.G.A. § 36-33-4 claim

AO 72A
(Rev.8/8
2)

against Defendant Arrington; and (7) Count XI, which asserted a punitive damages claim against Defendant Arrington, to the extent that claim arises under Georgia law. The Court **DISMISSES THOSE CLAIMS WITHOUT PREJUDICE**. This Order, together with the Court's Order addressing Defendant Floyd's Motion for Summary Judgment, resolves all of Plaintiff's claims. The Court consequently **DIRECTS** the Clerk to **CLOSE** this case.

IT IS SO ORDERED, this the 6th day of October, 2014.

UNITED STATES DISTRICT JUDGE

AO 72A
(Rev.8/8
2)